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New York State Personal Income Tax Revenue Bond Statutory Framework

Introduction:

Legislation enacted in 2001 authorized the issuance of State Personal Income Tax (PIT) Revenue Bonds for five Authorized Issuers, including the Urban Development Corporation (UDC), New York State Housing Finance Agency (HFA), the New York State Thruway Authority (Thruway Authority), the Dormitory Authority of the State of New York (DASNY), and the New York State Environmental Facilities Corporation (EFC). The legislation was amended in 2018 to provide the aggregate of 50 percent of State Personal Income Tax receipts, or \$12 billion, whichever is greater, be deposited into a debt service fund to cover debt service payments. The legislation was further amended starting in FY 2021 to include 50 percent of Pass-Through Entity Tax (PTET) receipts. Since the legislation was enacted, all five Authorized Issuers have issued PIT bonds.

Table of Contents:	A. Definitions
	B. Issuance of Bonds and Notes
	C. Payments to Authorized Issuers

**NEW YORK STATE PERSONAL INCOME TAX REVENUE BONDS
STATUTE
NEW YORK STATE FINANCE LAW -- ARTICLE 5-C
REVENUE BOND FINANCING PROGRAM**

Section:

- 68-a. Definitions.
- 68-b. Issuance of bonds and notes.
- 68-c. Payments to authorized issuers.

§ 68-a. Definitions.

1. "Authorized issuer" shall mean the following public authorities and public benefit corporations, and any successors thereto:

- (a) the dormitory authority of the state of New York;
- (b) the urban development corporation;
- (c) the New York state thruway authority;
- (d) the New York state environmental facilities corporation;
- (e) the New York state housing finance agency.

2. "Authorized purpose" for purposes of this article and section ninety-two-z of this chapter shall mean any purposes for which state-supported debt, as defined by section sixty-seven-a of this chapter, may or has been issued except debt for which the state is constitutionally obligated thereunder to pay debt service and related expenses.

3. "Revenue bonds" for the purposes of this article and section ninety-two-z of this chapter shall mean any bonds, notes or obligations issued or incurred pursuant to section sixty-eight-b of this article.

§ 68-b. Issuance of bonds and notes.

1. (a) Authorized issuers shall have the power and are hereby authorized from time to time to issue revenue bonds, in such principal amount or amounts, subject to subdivision eight of this section and as the director of the budget shall determine to be necessary, to provide sufficient funds for authorized purposes, the establishment of reserves to secure such revenue bonds, the payment of amounts required under revenue bonds or agreements relating thereto, and the payment of all costs of issuance of their revenue bonds.

(b) The authorized issuers shall have the power and are hereby authorized from time to time to issue (i) revenue bonds to renew notes, (ii) revenue bonds to pay notes, and (iii) whenever it deems refunding expedient, to refund any bonds, notes, or other obligations issued for an authorized purpose or purposes, by the issuance of new revenue bonds, including bonds, notes, or other obligations that were issued prior to the enactment of this article, whether the bonds, notes, or other obligations to be refunded have or have not matured, and to issue revenue bonds in part to refund bonds, notes, or other obligations then outstanding and in part for any of its other authorized purposes. The refunding revenue bonds may be exchanged for bonds, notes, or other obligations to be refunded, or sold and the proceeds applied to the purchase, redemption or payment of such bonds, notes, or other obligations.

(c) Except as may otherwise be expressly provided by an authorized issuer, every issue of revenue bonds of an authorized issuer pursuant to this section shall be special obligations of the authorized issuer payable solely out of any revenues paid over to such authorized issuer from the revenue bond tax fund, established pursuant to section ninety-two-z of this chapter.

(d) All of the provisions of the enabling acts of the authorized issuers relating to bonds and notes, which are not inconsistent with the provisions of this section, may, at the discretion of the authorized issuer, apply to revenue bonds authorized by this section.

(e) The revenue bonds of the authorized issuers authorized by this section shall not be a debt of the state and the state shall not be liable thereon, nor shall they be payable out of any funds other than those of the authorized issuers pledged therefor; and such revenue bonds shall contain on the face thereof a statement to such effect. In addition, any agreements entered into by any entity pursuant to sections sixty-eight-c and ninety-two-z of this chapter on behalf of the state to effect the implementation of any of the activities financed in whole or in part with proceeds of the revenue bonds of the authorized issuers authorized in this section do not constitute or create a debt of the state, nor a contractual obligation in excess of the amounts appropriated therefor, and the state has no continuing legal or moral obligation to appropriate money for payments due under any such agreement.

(f) (i) Revenue bonds shall be authorized by resolution of the authorized issuers, be in such denominations, bear such date or dates and mature at such time or times, as such resolution or other agreement may provide. (ii) Revenue bonds shall be subject to such terms of redemption, bear interest at such rate or rates, be payable at such times, be in such form, either coupon, registered or book entry form, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms and conditions as such resolution may provide.

(g) Revenue bonds authorized hereunder shall be sold by authorized issuers, at public or private sale, at such price or prices as the authorized issuers may determine. Revenue bonds of the authorized issuers shall not be sold by the authorized issuers at private sales unless such sale and the terms thereof have been approved by the state comptroller.

2. Consistent with the provisions of this article, and subject to the approval of the director of the budget, any resolution or other agreement authorizing revenue bonds or any issue thereof may contain provisions, which shall be a part of the contract with the holders thereof, as to:

(a) pledging all or any part of the revenues received by the authorized issuers pursuant to section sixty-eight-c of this article to secure the payment of the bonds or notes or of any issue thereof, subject to such agreements with holders of revenue bonds as may then exist;

(b) pledging all or any part of the assets of the authorized issuers to secure the payment of the revenue bonds or of any issue of revenue bonds subject to such agreements with holders of revenue bonds as may then exist;

(c) the setting aside of reserves or sinking funds and the regulation and disposition thereof;

(d) limitations on the purposes to which the proceeds of sale of revenue bonds, may be applied and pledging such proceeds to secure the payment of the revenue bonds or of any issue thereof;

(e) limitations on the issuance of additional revenue bonds the terms upon which additional revenue bonds may be issued and secured and the refunding of outstanding or other revenue bonds;

(f) the procedure, if any, by which the terms of any contract with holders of revenue bonds may be amended or abrogated, the amount of revenue bonds the holders of which must consent thereto and the manner in which such consent may be given;

(g) vesting in a trustee, as described in subdivision six of this section, such property, rights, powers and duties in trust as the authorized issuers may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the holders of revenue bonds of the respective authorized issuers pursuant to this article, and limiting or abrogating the right of such revenue bond holders to appoint a trustee under this title or limiting the rights, powers, and duties of such trustee;

(h) the acts or omissions to act which shall constitute a default in the obligations and duties of the authorized issuers to the holders of the revenue bonds and providing for the rights and remedies of the holders of the revenue bonds in event of such default, including the right to appointment of a receiver; provided, however, that such rights and remedies shall not be inconsistent with the other provisions of this article;

(i) any other matters, of like or different character, which in any way affect the security or protection of the holders of the revenue bonds; and

(j) the application of any of the foregoing provisions to any provider of any applicable bond, note or other financial facility.

Notwithstanding the foregoing, the authorized issuers shall not be authorized to make any covenant, pledge, promise, or agreement purporting to bind the state except as otherwise specifically authorized by this article.

3. Any pledge made by the respective authorized issuers shall be valid and binding from the time when the pledge is made. The revenues or property so pledged and thereafter received by the respective authorized issuers shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the respective authorized issuers, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded or filed to protect such pledge.

4. Neither the directors or members of the authorized issuers nor any other person executing the revenue bonds of the authorized issuers shall be liable personally thereon or be subject to any personal liability or accountability solely by reason of the issuance thereof.

5. The authorized issuers, subject to such agreements with holders of revenue bonds as may then exist, or with the providers of any applicable bond or note or other financial or agreement facility, shall have power out of any funds available therefor to purchase revenue bonds of the authorized issuers, which may or may not thereupon be canceled, at a price not exceeding:

(a) if the revenue bonds are then redeemable, the redemption price then applicable, including any accrued interest;

(b) if the revenue bonds are not then redeemable, the redemption price and accrued interest applicable on the first date after such purchase upon which the revenue bonds become subject to redemption.

6. In the discretion of the authorized issuers, the revenue bonds may be secured by a trust indenture by and between the authorized issuers and a corporate trustee, or a corporate trustee may be appointed under the resolution as provided in subdivision two of this section.

7. Whether or not the revenue bonds are of such form and character as to be negotiable instruments under the terms of the uniform commercial code, the revenue bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the revenue bonds for registration or any book-entry-only system.

8. Revenue bonds may only be issued for authorized purposes, as defined in section sixty-eight-a of this article. Notwithstanding the foregoing, the dormitory authority of the state of New York, the urban development corporation and the New York state thruway authority may issue revenue bonds for any authorized purpose of any other such authorized issuer through March thirty-first, two thousand twenty-five. Any such revenue bonds issued by the New York state thruway authority shall be subject to the approval of the New York state public authorities control board, pursuant to section fifty-one of the public authorities law. The authorized issuers shall not issue any revenue bonds in an amount in excess of statutory authorizations for such authorized purposes. Authorizations for such authorized purposes shall be reduced in an amount equal to the amount of revenue bonds issued for such authorized purposes under this article. Such reduction shall not be made in relation to revenue bonds issued to fund reserve funds, if any, and costs of issuance, if these items are not counted under existing authorizations, nor shall revenue bonds issued to refund bonds issued under existing authorizations reduce the amount of such authorizations.

9. Except upon the amendment of the New York state constitution allowing the issuance or assumption of bonds, notes or other obligations secured by revenues, which may include the revenues securing revenue bonds of authorized issuers, and the affirmative assumption of such bonds, notes or other obligations by the state, the revenue bonds of the authorized issuers authorized by this section shall not be a debt of the state and the state shall not be liable thereon, nor shall they be payable out of any funds other than those of the authorized issuers pledged therefor; and such revenue bonds shall contain on the face thereof a statement to such effect. In addition, any agreements entered into by any entity pursuant to sections sixty-eight-c and ninety-two-z of this chapter on behalf of the state to effect the implementation of any of the activities financed in whole or in part with proceeds of the obligations of the authorized issuers authorized in this section do not constitute or create a debt of the state, nor a contractual obligation in excess of the amounts appropriated therefor and the state has no continuing legal or moral obligation to appropriate money for payments due under any such agreement.

10. Nothing in this article shall affect the authority of each of the authorized issuers to issue or incur indebtedness for any purposes otherwise authorized by law and nothing in this article shall be deemed to alter or affect the rights of outstanding bondholders or noteholders of any authorized issuer.

11. The authorization, sale and issuance of revenue bonds pursuant to this section shall not be deemed an action as such term is defined in article eight of the environmental conservation law for the purposes of such article. Such exemption shall be strictly limited in its application to such financing activities of the authorized issuers hereunder and does not exempt any other entity from compliance with such article.

12. The comptroller is hereby authorized to receive from the authorized issuers any portion of bond proceeds paid to provide funds for or reimburse the state for its costs associated with such authorized purposes and to credit such amounts to the capital projects fund or any other appropriate fund.

§ 68-c. Payments to authorized issuers.

1. The state, acting through the director of the budget, and authorized issuers may enter into, amend, modify, or rescind one or more financing agreements providing for the specific manner, timing, and amount of payments to be made under this section, but only in conformity with this section.
2. No later than October first of each year, the authorized issuers shall certify to the director of the budget the anticipated cash requirements related to revenue bonds during the subsequent state fiscal year in such detail as the director may require.
3. Upon receipt of a voucher from any authorized issuer requesting payment for such amount or amounts certified by the director of the budget pursuant to paragraph (a) of subdivision five of section ninety-two-z of this chapter, the state comptroller shall pay such amount or amounts to the authorized issuer from appropriations for such purpose.
4. The agreement of the state contained in this section shall be deemed executory only to the extent of appropriations available for payments under this section, and no liability on account of any such payment shall be incurred by the state beyond such appropriations.
5. Nothing contained in this article shall be deemed to restrict the right of the state to amend, repeal, modify or otherwise alter statutes imposing or relating to the taxes imposed pursuant to article twenty-two, article twenty-four, and article twenty-four-A of the tax law. The authorized issuers shall not include within any resolution, contract or agreement with holders of the revenue bonds issued under this article any provision which provides that a default occurs as a result of the state exercising its right to amend, repeal, modify or otherwise alter the taxes imposed pursuant to article twenty-two, article twenty-four, and article twenty-four-A of the tax law.
6. Any resolution or other agreement authorizing revenue bonds under this article shall reserve the right of the state, upon amendment of the New York state constitution allowing the issuance or assumption of bonds, notes or other obligations secured by revenues, which may include the revenues securing revenue bonds of authorized issuers (a) to assume, in whole or in part, revenue bonds of the authorized issuers, (b) to extinguish the existing lien of such resolution, or other agreement and (c) to substitute security for the revenue bonds of the authorized issuers, in each case only so long as such assumption, extinguishment or substitution is done in accordance with such resolution or other agreement.