



GOVERNOR **KATHY HOCHUL**

BUDGET DIRECTOR **ROBERT F. MUJICA, JR.**

New York State Sales Tax Revenue Bond Statutory Framework

Introduction:

Article 5-F & Article 6 (Section 92-h) of the State Finance Law established the Sales Tax Revenue Bond Program which provides for the issuance of bonds for a variety of purposes supported by a portion of the State's Sales Tax. In summary, Sales Tax bonds are currently anticipated to be one of the primary vehicles of new money State-supported bond issuances, and are supported by setting aside an amount equal initially to a one percent rate of taxation of the State's four percent sales tax, and increasing to a two percent rate of taxation upon the satisfaction of all obligations and liabilities of the Local Government Assistance Corporation.

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NEW YORK STATE SALES TAX REVENUE BONDS STATUTE
NEW YORK STATE FINANCE LAW -- ARTICLE 5-F
SALES TAX REVENUE BOND FINANCING PROGRAM

Section:

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§ 69-m. Definitions.

1. "Authorized issuer" shall mean the dormitory authority of the state of New York, the New York state urban development corporation, the New York state thruway authority, and any successors thereto.
2. "Authorized purpose" for purposes of this article and section ninety-two-h 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-h of this chapter shall mean any bonds, notes or obligations issued or incurred pursuant to section sixty-nine-n of this article.

§ 69-n. 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, including bonds, notes or other obligations that were issued prior to the effective date of this article, by the issuance of new revenue bonds, 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 sales tax revenue bond tax fund, established pursuant to section ninety-two-h 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-nine-o and ninety-two-h 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-nine-o 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; or

(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; or

(c) Whether or not the revenue bonds are then redeemable, at a redemption price that provides present value savings to the state, as certified in writing by an independent financial advisor.

No later than seven days after a redemption pursuant to paragraph (c) of this subdivision, the director of the budget shall provide such written certification to the chair of the senate finance committee and the chair of the assembly ways and means committee.

6. In the discretion of 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 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-nine-m of this article. Notwithstanding the foregoing, any authorized issuer may issue revenue bonds for any authorized purpose. 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-nine-o and ninety-two-h 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.

§ 69-o. 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 authority 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-h of this chapter, the state comptroller shall pay such amount or amounts to be 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 section eleven hundred five and section eleven hundred ten 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 section eleven hundred five and section eleven hundred ten 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.

NEW YORK STATE FINANCE LAW -- ARTICLE 6 (SECTION 92-H) SALES TAX REVENUE BOND TAX FUND

§ 92-h. Sales tax revenue bond tax fund.

1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a fund within the general debt service fund to be known as the "sales tax revenue bond tax fund".
2. Such fund shall consist of the amount of revenue collected within the state from the imposition of the sales and compensating use taxes (including interest and penalties) pursuant to section eleven hundred five and section eleven hundred ten of the tax law equal to the amount attributable to a one percent rate of taxation, less such amounts as the commissioner of taxation and finance may determine to be necessary for refunds. On and after the date that all of the obligations and liabilities of the New York local government assistance corporation shall have been met or otherwise discharged, other than payment obligations required by section thirty-two hundred thirty-eight-a of the public authorities law, it shall equal the amount attributable to a two percent rate of taxation, less such amounts as the commissioner of taxation and finance may determine to be necessary for refunds. Such sales and compensating use tax revenues shall be separate and distinct from the sales and compensating use tax revenues deposited from time to time in the local government assistance tax fund, pursuant to section ninety-two-r of this chapter.
3. On or before the twelfth day of each month, the commissioner of taxation and finance shall certify to the state comptroller the amounts specified in subdivision two of this section relating to the preceding month and, in addition, no later than March thirty-first of each fiscal year the commissioner of taxation and finance shall certify such amounts relating to the last month of such fiscal year. The amounts so certified shall be deposited by the state comptroller in the sales tax revenue bond tax fund.
4. Moneys in the sales tax revenue bond tax fund shall be kept separate and shall not be commingled with any other moneys in the custody of the state comptroller and the commissioner of taxation and finance. All deposits of such revenues shall, if required by the state comptroller, be secured by obligations of the United States or of the state having a market value equal at all times to the amount of such deposits and all banks and trust companies are authorized to give security for such deposits. Any such moneys in such fund may, in the discretion of the state comptroller, be invested in obligations in which the state comptroller is authorized to invest pursuant to section ninety-eight-a of this article.
5. (a) The state comptroller shall from time to time, but in no event later than the fifteenth day of each month (other than the last month of the fiscal year) and no later than the thirty-first day of the last month of each fiscal year, pay over and distribute to the credit of the general fund of the state treasury all moneys in the sales tax revenue bond tax fund, if any, in excess of the aggregate amount required to be set aside for the payment of cash requirements pursuant to paragraph (b) of this subdivision, provided that an appropriation has been made to pay all amounts specified in any certificate or certificates delivered by the director of the budget pursuant to paragraph (b) of this subdivision as being required

by any authorized issuer as such term is defined in section sixty-nine-m of this chapter for the payment of cash requirements of such authorized issuers for such fiscal year. Subject to the rights of holders of debt of the state, in no event shall the state comptroller pay over and distribute any moneys on deposit in the sales tax revenue bond tax fund to any person other than an authorized issuer pursuant to such certificate or certificates (i) unless and until the aggregate of all cash requirements certified to the state comptroller as required by such authorized issuers to be set aside pursuant to paragraph (b) of this subdivision for such fiscal year shall have been appropriated to such authorized issuers in accordance with the schedule specified in the certificate or certificates filed by the director of the budget or (ii) if, after having been so certified and appropriated, any payment required to be made pursuant to paragraph (b) of this subdivision has not been made to the authorized issuers pursuant to such certificate or certificates; provided, however, that no person, including such authorized issuers or the holders of revenue bonds, shall have any lien on moneys on deposit in the sales tax revenue bond tax fund. Any agreement entered into pursuant to section sixty-nine-o of this chapter related to any payment authorized by this section shall be executory only to the extent of such revenues available to the state in such fund. Notwithstanding subdivisions two and three of this section, in the event the aggregate of all cash requirements certified to the state comptroller as required by such authorized issuers to be set aside pursuant to paragraph (b) of this subdivision for the fiscal year beginning on April first shall not have been appropriated to such authorized issuers in accordance with the schedule specified in the certificate or certificates filed by the director of the budget or, if, having been so certified and appropriated, any payment required to be made pursuant to paragraph (b) of this subdivision has not been made pursuant to such certificate or certificates, all receipts collected and deposited in the sales tax revenue bond tax fund shall remain in such fund. Notwithstanding any other provision of law, if the state has appropriated and paid to the authorized issuers all amounts necessary for the authorized issuers to meet their cash requirements for the current fiscal year pursuant to the certificate or certificates submitted by the director of the budget pursuant to paragraph (b) of this section, the state comptroller shall, on the last day of each fiscal year, pay to the general fund of the state all sums remaining in the sales tax revenue bond tax fund on such date except such amounts as the director of the budget may certify are needed to meet the cash requirements of authorized issuers during the subsequent fiscal year.

(b) No later than thirty days after the submission of the executive budget in accordance with article seven of the constitution, the director of the budget shall prepare a certificate of the amount of monthly receipts anticipated to be deposited pursuant to subdivision two of this section during the fiscal year beginning April first of that year together with the monthly amounts necessary to be set aside from the receipts of such fund, as shall be sufficient to meet the total cash requirements of authorized issuers, as defined by section sixty-nine-m of this chapter during such fiscal year, based on information that shall be provided by such authorized issuers, consistent with the terms of any contract with outstanding bondholders. Except for the purpose of meeting cash requirements of an authorized issuer that are due on a monthly or more frequent basis, prior to transferring any moneys from the account pursuant to paragraph (a) of this subdivision, the comptroller shall set aside on a monthly basis all revenues deposited pursuant to this subdivision as received until the amount set aside is equal to one-fifth of the interest due on such obligations on the next succeeding interest payment date multiplied by the number of months from the last such payment and one-eleventh of the next principal installment due on such obligations multiplied by the

number of months from the last such principal installment where principal is due on an annual basis or one-fifth of the next principal installment due on such obligations multiplied by the number of months from the last such principal installment where principal is due on a semiannual basis. For the purpose of meeting cash requirements of an authorized issuer that are due on a monthly basis or more frequently, the comptroller shall set aside all revenues deposited pursuant to subdivision two of this section as received until the amount so set aside is, in the reasonable judgment of the director of the budget as set forth in such certificate, sufficient to make the required payment on or before such payment date.

Notwithstanding subdivision three of, section seventy-two of this article or any other provision of law, all moneys set aside in the sales tax revenue bond tax fund to meet the annual cash requirements of authorized issuers pursuant to a certificate or certificates as required in this paragraph shall remain in the sales tax revenue bond tax fund until needed for payment to authorized issuers, as provided in this section. In the event that the amount set aside by the state comptroller pursuant to this paragraph is not sufficient to meet the cash requirements required pursuant to a certificate or certificates submitted by the director of the budget, the state comptroller shall immediately transfer from the general fund to the sales tax revenue bond tax fund an amount which, when combined with the amount set aside pursuant to this paragraph, shall be sufficient to meet the payment required pursuant to such certificate or certificates. The director of the budget may revise such certification at such times as shall be necessary, provided, however, that the director of the budget shall, as necessary, revise such certification not later than thirty days after the issuance of any revenue bonds, including refunding bonds, and after the adoption of any interest rate exchange or other financial arrangement affecting the cash requirements of the authorized issuers. In no event shall the state comptroller be held liable for the failure to set aside an amount sufficient to pay any required payment of an authorized issuer.

6. All payments of moneys from the revenue bond tax fund shall be made on the audit and warrant of the state comptroller.