

## NY CLS Pub A, Art. 10-B, Title 4

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 10-B [New York Local Government Assistance Corporation] (Title 4) > Title 4 New York Local Government Assistance Corporation (§§ 3231 — 3249)*

### Title 4 New York Local Government Assistance Corporation

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#### History

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Add, L 1990, ch 220, § 1, eff June 11, 1990.

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## § 3231. Short title

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This title may be cited as the “New York local government assistance corporation act”.

## History

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Add, L 1990, ch 220, § 1, eff June 11, 1990.

Annotations

## Notes to Decisions

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### 1. Constitutionality

Local Government Assistance Corporation Act, which establishes public benefit corporation for purpose of providing assistance payments to local government units through issuance and sale of corporation’s bonds, is constitutional because provisions of Act which relate to any payments by state are executory and subject to legislative appropriation, and thus statutory scheme neither creates debt of state, in violation of CLS NY Const Art VII § 11, nor gives or lends state’s credit to aid any public or private corporation, in violation of CLS NY Const Art VII § 8(1). *Schulz v State*, 151 Misc. 2d 594, 582 N.Y.S.2d 355, 1992 N.Y. Misc. LEXIS 77 (N.Y. Sup. Ct.), modified, aff’d, 185 A.D.2d 596, 586 N.Y.S.2d 428, 1992 N.Y. App. Div. LEXIS 9107 (N.Y. App. Div. 3d Dep’t 1992).

Local Government Assistance Corporation Act, which establishes public benefit corporation for purpose of providing assistance payments to local government units through issuance and sale of corporation’s bonds, neither imposes liability on state or any political subdivision for payment of obligations issued by public corporation nor requires legislature to impose such liability on state or any political subdivision in violation of CLS NY Const Art X § 5. *Schulz v State*, 151 Misc. 2d 594, 582 N.Y.S.2d 355, 1992 N.Y. Misc. LEXIS 77 (N.Y. Sup. Ct.), modified, aff’d, 185 A.D.2d 596, 586 N.Y.S.2d 428, 1992 N.Y. App. Div. LEXIS 9107 (N.Y. App. Div. 3d Dep’t 1992).

## § 3232. Definitions

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For the purpose of this title:

1. "Director of the budget" means the director of the budget of the state of New York.
2. "Corporation" means the New York local government assistance corporation as created by this title.
3. "Comptroller" means the comptroller of the state of New York.
4. "State" means the state of New York.
5. "Revenues" means all aid, rents, fees, charges, payments and other income and receipts paid or payable to the corporation or to a trustee for the account of the corporation, including any payment required to be made to the corporation by this title.
6. "Operating expenses" means all expenses incurred by the corporation in the administration of the corporation including but not limited to salaries, administrative expenses, insurance premiums, fees payable to providers of bond or note facilities, auditing and legal expenses and fees and expenses incurred for professional consultants and fiduciaries.
7. "Capital reserve fund requirement" means, as of any particular date of computation and with respect to any capital reserve fund, the maximum amount required to pay, during the then current or any succeeding fiscal year, on all bonds of the corporation secured by such capital reserve fund outstanding as of the date of computation, the maximum combined amount of all interest payable during such fiscal year and all installments of principal (including mandatory sinking fund payments and amounts, payable on principal so paid, that are treated as original issue discount under the code and regulations thereunder) payable during such fiscal year; provided that the corporation may, if it determines that the security and marketability of bonds secured by a capital reserve fund will not be unduly adversely affected, reduce the requirement with respect to such capital reserve fund as so defined so as to equal no less than half of the amount so calculated; and provided, further, that the corporation may increase the amount calculated as provided in this subdivision with respect to a capital reserve fund by including any designated notes of the corporation as bonds, upon any related issuance

proceeds of which will fund the increase, and provided, further, that interest payable at a variable rate on any bonds of the corporation or payable at a rate then not determinable on short term notes to be issue [issued]\* by the corporation in renewal or replacement of other short term notes shall for purposes of any such calculation be assumed to be payable at a rate or rates reasonably assumed by the corporation having due regard for the security and marketability of all its bonds and notes.

8. "Code" means the United States Internal Revenue Code of 1986, as amended.

9. "Net proceeds" means the aggregate principal amount of any bonds or notes issued by the corporation, reduced by any amount of such bonds or notes that constitutes interest under the code and further reduced by the portion of such aggregate principal amount issued (i) to fund the capital reserve fund in accordance with the capital reserve fund requirement and to fund any other reserves that the corporation reasonably deems necessary for the security or marketability of its bonds and notes, (ii) to provide capitalized interest, and (iii) to provide fees and other charges and expenses, including underwriters' discount, related to the issuance of such bonds or notes, including fees and other charges payable from such proceeds to providers of bond or note facilities.

10. "Bond or note facility" means any insurance policy, letter of credit or other facility, agreement or arrangement referred to in subdivision sixteen, seventeen or eighteen of section three thousand two hundred thirty-five of this title.

11. "Local government" means a county, city, town, village, school district, city school district or board of cooperative educational services.

## History

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Add, L 1990, ch 220, § 1, eff June 11, 1990; amd, L 1991, ch 2, § 1, eff Jan 29, 1991.

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\* The bracketed word has been inserted by Publisher.

## **§ 3233. New York local government assistance corporation**

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1. There is hereby created the New York local government assistance corporation. The corporation shall be a corporate governmental agency constituting a public benefit corporation. It shall have the powers and privileges of a corporation and all of its business shall be transacted, all funds invested, all warrants for money drawn and payments made, and all cash and securities and other personal property held under its corporate name.
2. The corporation shall continue until six months after all its liabilities have been met or otherwise discharged. Upon the termination of the existence of the corporation, all of its rights and property shall pass to and be vested in the state.

## **History**

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Add, L 1990, ch 220, § 1, eff June 11, 1990.

Annotations

## **Research References & Practice Aids**

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**Codes, Rules and Regulations:**

Public access to records. 21 NYCRR §§ 9760.1 et seq.

## § 3234. Administration of the corporation

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1.

(a) The corporation shall be administered by seven directors, one of whom shall be the comptroller, one of whom shall be the director of the budget and five of whom shall be appointed by the governor. The comptroller and the director of the budget shall be entitled to designate a representative or representatives to attend meetings of the board in their place, and to vote or otherwise act on their behalf in their absence. Notice of such designation shall be furnished in writing to the board by the designating director. A representative shall serve at the pleasure of the designating director during the director's term of office. A representative shall not be authorized to delegate any of his or her duties or functions to any other person. A director who is not a state official shall serve for a term expiring at the end of the term actually served by the officer making the appointment and may be removed for cause by such officer after hearing on ten days notice.

(b) The secretary to the senate finance committee and the secretary to the assembly ways and means committee shall be nonvoting representatives who shall receive notice of and be entitled to attend all meetings of the directors and who shall also receive the same supporting and other documentation related to each vote to be taken by the directors at each meeting as is provided to the directors, at the same time as it is provided to the directors. The comments of the nonvoting representatives shall be entered upon the record of the meeting.

2. The governor shall designate a chairperson and a vice-chairperson from among the directors. The chairperson shall preside over all meetings of the directors and shall have such other duties as the directors or the corporation may direct. The vice-chairperson shall preside over all meetings of the directors in the absence of the chairperson and shall have such other duties as the directors of the corporation may prescribe.

3. The directors of the corporation shall serve without salary, but each director shall be reimbursed for actual necessary expenses incurred in the performance of such director's official duties as a director of the

corporation. The directors of the corporation may engage in private employment or in a profession or business if not otherwise prohibited from so doing by virtue of any other public office.

4. Notwithstanding any inconsistent provisions of law, general, special or local, no officer or employee of the state of New York, any city, county, town or village, any other political or civil division of the state, any municipality, any governmental entity operating any public school or college, any school district or any other public agency or instrumentality or unit of government which exercises governmental powers under the laws of the state, shall forfeit office or employment by reason of acceptance of appointment as a director, representative, officer or agent of the corporation nor shall service as such director, representative, officer or agent of the corporation be deemed incompatible or in conflict with such office or employment.

5. A majority of the whole number of directors then in office shall constitute a quorum for the transaction of any business or the exercise of any power of the corporation. Except as otherwise specified in this title, for the transaction of any business or the exercise of any power of the corporation, the corporation shall have power to act by a majority of the directors present at any meeting at which a quorum is in attendance; provided that one or more directors may participate in a meeting by means of conference telephone or similar communications equipment allowing all directors participating in the meeting to hear each other at the same time and participation by such means shall constitute presence in person at a meeting. A unanimous vote of all directors then in office shall be required for approval of a resolution authorizing the issuance of bonds or notes or any supplemental or amendatory resolution. The corporation may delegate to one or more of its directors, or officers, agents and employees, such powers and duties as the directors may deem proper. Five days notice shall be given to each director and nonvoting representative prior to any meeting of the corporation.

6. On or before November fifteenth of each year, the corporation shall submit a financial statement and a report of its activities for such corporation's immediately preceding fiscal year to the governor, the temporary president of the senate, the speaker of the assembly, the comptroller, the chair of the senate finance committee and the chair of the assembly ways and means committee.

## History

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Add, L 1990, ch 220, § 1, eff June 11, 1990; amd, L 1991, ch 2, § 2, eff Jan 29, 1991; L 2002, ch 81, § 54 (Part K), eff May 29, 2002, deemed eff April 1, 2002; L 2005, ch 766, § 23, eff Jan 13, 2006; L 2010, ch 48, § 2, eff April 26, 2010; L 2011, ch 58, § 47 (Part BB), eff April 26, 2010, expired and repealed March 31, 2013; L 2013, ch 57, § 45 (Part HH), eff March 31, 2013; L 2014, ch 55, § 46–d (Part I), eff March 31, 2014, deemed eff on and after April 1, 2014.

Annotations

## Notes

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**Editor's Notes:**

**Laws 2005, ch 766, §§ 1 and 31**, eff Jan 13, 2006, provide as follows:

Section 1. Short title. This act shall be known and may be cited as the “public authorities accountability act of 2005”.

§ 31. This act shall take effect immediately and shall apply to the public authority fiscal year beginning on or after January 1, 2006, provided however that section twenty-seven of this act shall take effect April 1, 2006.

**Laws 2010, ch 48, § 3**, eff April 26, 2010, deemed eff April 1, 2010, provides as follows:

§ 3. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2010, provided, however, that section two of this act shall expire March 31, 2011, when, upon such date, the provisions of such section shall be deemed repealed.

**Laws 2011, ch 58, § 59 (Part BB)**, eff March 31, 2011, deemed eff on and after April 1, 2011, provides as follows:

§ 59. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2011; provided further that sections one through fourteen-a and sections eighteen through twenty-eight of this act shall expire March 31, 2012, when upon such date, the provisions of such sections shall be deemed repealed; provided further that the amendments to subdivision 5 of section 97-rrr of the state finance law made by section sixteen of this act shall not affect the expiration of such subdivision and shall expire therewith; and provided further that section forty-seven of this act shall take effect on the same date as the reversion of subdivision 5 of section 3234 of the public authorities law as provided in section 3 of chapter 48 of the laws of 2010, as amended and shall expire and be deemed repealed March 31, 2013.

**Laws 2013, ch 57, § 70, sub (c)**, eff March 29, 2013, deemed eff on and after April 1, 2013, provides as follows:

§ 70. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2013; provided that:

(c) the amendments to subdivision 5 of section 3234 of the public authorities law made by section forty-five of this act shall take effect upon the expiration and reversion of such subdivision as provided in section 59 of part BB of chapter 58 of the laws of 2011;

## NY CLS Pub A § 3235

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 10-B [New York Local Government Assistance Corporation] (Title 4) > Title 4 New York Local Government Assistance Corporation (§§ 3231 — 3249)*

### § 3235. General powers of the corporation

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The corporation shall have the following powers in addition to those specially conferred elsewhere in this title:

1. to sue and be sued;
2. to have a seal and alter the same at pleasure;
3. to make and alter by-laws for its organization and internal management and, subject to agreements with bondholders or noteholders, to make rules and regulations governing the use of its property and facilities;
4. to make and execute contracts, leases, subleases and all other instruments or agreements necessary or convenient for the exercise of its powers and functions under this title;
5. to purchase real or personal property necessary and convenient for its purposes; to execute and deliver deeds for real property held in its own name; and to sell or otherwise to dispose of such real or personal property that, in the judgment of the corporation, is no longer necessary for its corporate purposes;
6. to appoint officers, agents and employees, prescribe their duties and qualifications and fix their compensations subject to the provisions of the civil service law and any applicable collective bargaining agreement;
7. to commence any action to protect or enforce any right conferred upon it by any law, contract or other agreement;
8. to make payments to local governments in such amounts as are provided for by this title;
9. to borrow money and, in accordance with section three thousand two hundred thirty-six of this title, to issue bonds or notes or other obligations in respect of amounts borrowed and to fund or refund the same, and to provide for the rights of the holders of its obligations subject to provisions of this title;

10. subject to the provisions of any contract with bondholders or noteholders, to invest any funds held in reserves or sinking funds, or any funds not required for immediate use or disbursement, at the discretion of the corporation, in obligations in which the comptroller is authorized to invest pursuant to section ninety-eight-a of the state finance law;
11. subject to the provisions of any contract with bondholders or noteholders, to purchase bonds or notes of the corporation;
12. to procure insurance in such amounts and from such insurers as it deems desirable;
13. to engage the services of consultants on a contract basis for rendering professional and technical assistance and advice;
14. to receive and accept, and contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof, the state or any agency or instrumentality thereof, or from any other source and to comply with the terms and conditions thereof;
15. as security for the payment of the principal of and interest on any bonds or notes issued by it pursuant to this title and any agreements made in connection therewith and for its obligations under bond or note facilities to pledge all or any part of its revenues or assets;
16. to procure insurance, letters of credit or other credit enhancement with respect to its bonds or notes issued pursuant to this title, or facilities for the payment of tenders of such bonds or notes or facilities for the payment upon maturity of short-term notes not renewed;
17. to adopt, amend or rescind rules and regulations appropriate to its corporate purposes and to enter into agreements and otherwise to do any and all things necessary or convenient to carry out its purposes and exercise the powers expressly given and granted in this title.
18. [Repealed]
19. [Redesignated]

## History

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Add, L 1990, ch 220, § 1, eff June 11, 1990; amd, L 2002, ch 81, § 41 (Part K), eff May 29, 2002, deemed eff April 1, 2002.

Annotations

## Notes

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**Editor's Notes:**

**Laws 2002, ch 81, § 42 (Part K)**, eff May 29, 2002, deemed eff April 1, 2002, provides as follows:

§ 42. Any interest rate exchange agreement entered into pursuant to subdivisions 17 and 18 of section 3235 of the public authorities law as repealed by section forty-one of this act prior to the effective date of this act shall, upon the effective date hereof, be governed by the provisions of article 5-D of the state finance law, as added by section thirty-eight of this act, and as may subsequently be amended.

## Notes to Decisions

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### 1. Constitutionality

Plaintiffs who were citizens, residents, taxpayers and registered voters of state lacked standing to maintain declaratory judgment action challenging constitutionality of Local Government Assistance Corporation Act (CLS Pub A § 3231 et seq.) on grounds that it violated, inter alia, CLS NY Const Art VII §§ 11 and 8 by authorizing issuance of long-term, tax-supported state debt for multiple purposes which were not distinctly specified, without voter approval, and by permitting lending of state's credit to Corporation, and that it violated CLS NY Const Art X §

5. *Schulz v State*, 185 A.D.2d 596, 586 N.Y.S.2d 428, 1992 N.Y. App. Div. LEXIS 9107 (N.Y. App. Div. 3d Dep't 1992), app. dismissed, app. denied, 81 N.Y.2d 336, 599 N.Y.S.2d 469, 615 N.E.2d 953, 1993 N.Y. LEXIS 1172 (N.Y. 1993).

Citizen taxpayers lacked standing to challenge constitutionality of Local Government Assistance Corporation Act, which establishes public benefit corporation for purpose of providing assistance payments to local government units through issuance and sale of corporation's bonds, in view of CLS St Fin § 123-b(1), which provides that standing otherwise accorded to citizen taxpayers to challenge illegal or unconstitutional disbursement of state funds does not apply to bond issue by any public benefit corporation. *Schulz v State*, 151 Misc. 2d 594, 582 N.Y.S.2d 355, 1992 N.Y. Misc. LEXIS 77 (N.Y. Sup. Ct.), modified, aff'd, 185 A.D.2d 596, 586 N.Y.S.2d 428, 1992 N.Y. App. Div. LEXIS 9107 (N.Y. App. Div. 3d Dep't 1992).

## Research References & Practice Aids

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**Cross References:**

This section referred to in §§ 3232, 3239.

## NY CLS Pub A § 3236

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 10-B [New York Local Government Assistance Corporation] (Title 4) > Title 4 New York Local Government Assistance Corporation (§§ 3231 — 3249)*

### § 3236. Bonds and notes of the corporation

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1.

(a) The corporation shall have power and is hereby authorized from time to time to issue its bonds and notes in such principal amount or amounts, subject to subdivision eight of this section, as the corporation shall determine to be necessary, to provide sufficient funds for achieving its corporate purposes, including the making of payments pursuant to section three thousand two hundred thirty-eight of this title, the payment of interest on bonds and notes of the corporation, the establishment of reserves to secure such bonds and notes, the payment of amounts required under bond or note facilities or agreements relating thereto, and the payment of all costs of issuance of its bonds and notes.

(b) The corporation shall have the power and is hereby authorized from time to time to issue (i) notes to renew notes and (ii) bonds to pay notes, including the interest thereon and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any of its other corporate purposes. The refunding bonds may be exchanged for the bonds to be refunded or sold and the proceeds applied to the purchase, redemption or payment of such bonds.

(c) Except as may otherwise be expressly provided by the corporation, every issue of its bonds and notes shall be general obligations of the corporation payable out of any revenues of the corporation, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues.

(d)

(i) Bonds and notes shall be authorized by resolution of the corporation, be in such denominations and bear such date or dates and mature at such time or times, as such resolution may provide, provided that bonds and notes and renewals or refundings thereof shall mature on a date not later than December thirty-first, two thousand twenty-five nor more than thirty years from the date of original issuance.

(ii) Bonds and notes 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.

(e) Such bonds shall be sold to the bidder offering the lowest interest cost to the corporation, taking into consideration any premium or discount and, in the case of refunding bonds, the bona fide initial public offering price, not less than four nor more than fifteen days, Sundays excepted, after a notice of such sale has been published at least once in a definitive trade publication of the municipal bond industry published on each business day in the state of New York which is generally available to participants in the municipal bond industry, which notice shall state the terms of the sale. The corporation may not change the terms of the sale unless notice of such change is sent via a definitive trade wire service of the municipal bond industry which, in general, makes available information regarding activity and sales of municipal bonds and is generally available to participants in the municipal bond industry, at least one hour prior to the time of the sale as set forth in the original notice of sale. In so changing the terms or conditions of a sale the corporation may send notice by such wire service that the sale will be delayed by up to thirty days, provided that wire notice of the new sale date will be given at least one business day prior to the new time when bids will be accepted. In such event, no new notice of sale shall be required to be published. Advertisements shall contain a provision to the effect that the corporation, in its discretion, may reject any or all bids made in pursuance of such advertisements, and in the event of such rejection, the corporation is authorized to negotiate a private sale or readvertise for bids in the form and manner above described as many times as, in its judgment, may be necessary to effect a satisfactory sale. Notwithstanding the foregoing provisions of this paragraph, whenever in the judgment of the corporation the interests of the corporation will be served thereby, the corporation may sell bonds at private sale. The corporation shall promulgate regulations governing the terms and conditions of any such private sales, which regulations shall include a provision that it give notice to the governor, the temporary president of the senate, and the speaker of the assembly of its intention to conduct a private sale of obligations pursuant to this section not less than five days prior to such sale or the execution of any binding agreement to effect such sale.

(f) The corporation shall enter into an agreement with the comptroller pursuant to which the comptroller shall be the exclusive agent of the corporation for the sale of its bonds and notes.

2. Consistent with the provisions of this title, any resolution authorizing any bonds or notes 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 to secure the payment of the bonds or notes or of any issue thereof, subject to such agreements with bondholders or noteholders as may then exist;

- (b) pledging all or any part of the assets of the corporation to secure the payment of the bonds or notes or of any issue of bonds or notes, subject to such agreements with bondholders or noteholders 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 bonds or notes may be applied and pledging such proceeds to secure the payment of the bonds or notes or of any issue thereof;
- (e) limitations on the issuance of additional bonds or notes; the terms upon which additional bonds or notes may be issued and secured; and the refunding of outstanding or other bonds or notes;
- (f) the procedure, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto, and the manner in which such consent may be given;
- (g) limitations on the amount of moneys to be expended by the corporation for operating expenses of the corporation;
- (h) vesting in a trustee, as described in subdivision six of this section, such property, rights, powers and duties in trust as the corporation may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this title, and limiting or abrogating the right of the bondholders to appoint a trustee under this title or limiting the rights, powers, and duties of such trustee;
- (i) the acts or omissions to act which shall constitute a default in the obligations and duties of the corporation to the holders of the bonds or notes and providing for the rights and remedies of the holders of the bonds or notes in event of such default, including the right to appointment of a receiver; providing, however, that such rights and remedies shall not be inconsistent with the general laws of the state and the other provisions of this title;
- (j) any other matters, of like or different character, which in any way affect the security or protection of the holders of the bonds or notes; and
- (k) the application of any of the foregoing provisions to any provider of any applicable bond or note facility.

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

**3.** Any pledge made by the corporation shall be valid and binding from the time when the pledge is made. The revenues or property so pledged and thereafter received by the corporation 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 corporation, 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 of the corporation nor any other person executing the bonds or notes of the corporation shall be subject to any personal liability or accountability by reason of the issuance thereof.

5. The corporation, subject to such agreements with bondholders or noteholders as may then exist, or with the providers of any applicable bond or note facility, shall have power out of any funds available therefor to purchase bonds or notes of the corporation, which may or may not thereupon be cancelled, at a price not substantially exceeding:

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

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

6. In the discretion of the directors of the corporation, the bonds and notes may be secured by a trust indenture by and between the corporation 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 bonds and notes are of such form and character as to be negotiable instruments under the terms of the uniform commercial code, the bonds and notes 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 bonds and notes for registration or any book-entry-only system.

8.

(a) The corporation shall not issue any bonds or notes in an amount in excess of four billion seven hundred million dollars, plus a principal amount of bonds or notes:

(i) to fund any capital reserve fund in accordance with the capital reserve fund requirement,

(ii) to provide capitalized interest for a period not to exceed six months, and

(iii) to provide for the payment of fees and other charges and expenses, including underwriters' discount, related to the issuance of such bonds or notes, or related to the provision of any applicable bond or note facilities.

(b) In computing for the purposes of this section, the aggregate amount of indebtedness evidenced by bonds and notes of the corporation issued pursuant to this title, there shall be excluded (i) the amount of bonds or notes issued that would constitute interest under the Code as amended to the effective date of this title, and (ii) the amount of such indebtedness represented by such bonds or notes issued to refund or otherwise repay bonds or notes, provided that the amount so excluded under this subparagraph (ii) may exceed the principal amount of such bonds or notes that were issued to refund

or otherwise repay only if the present value of the aggregate debt service on the refunding or repayment bonds or notes shall not have at the time of their issuance exceeded the present value of the aggregate debt service of the bonds or notes they were issued to refund or repay, such present value in each case being calculated by using the effective interest rate of the refunding or repayment bonds or notes, which shall be that rate arrived at by doubling the semi-annual interest rate (compounded semi-annually) necessary to discount the debt service payments on the refunding or repayment bonds or notes from the payment date thereof to the date of issue of the refunding or repayment bonds or notes and to the price bid therefor, or to the proceeds received by the corporation from the sale thereof, in each case including estimated accrued interest.

9. Each issuance of bonds by the corporation under this title shall provide for the retirement thereof so that debt service thereon, calculated in accordance with reasonably assumed interest rates to the extent not then determinable, shall be on a substantially [substantial]\* level or decreasing debt-service payment basis no later than one year from the date of their issuance to the date of retirement of the latest bond within such issue to retire. Each issuance of notes shall provide for annual reductions of the aggregate outstanding principal in equal or increasing amounts of such reduction. Notwithstanding the foregoing, if the corporation shall issue refunding bonds, the debt service thereon shall be structured on any basis that the corporation deems is in its best interest, provided that debt service on all outstanding bonds, notes and other financial obligations is not increased in any future fiscal year after giving effect to such refunding.

## History

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Add, L 1990, ch 220, § 1, eff June 11, 1990; amd, L 1991, ch 2, § 3, eff Jan 29, 1991; L 1999, ch 219, § 11, eff July 12, 1999; L 2011, ch 58, § 48 (Part BB), eff March 31, 2011, deemed eff on and after April 1, 2011.

Annotations

## Research References & Practice Aids

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### Cross References:

This section referred to in §§ 3235, 3241-a, 3243.

### Codes, Rules and Regulations:

Private sale of bonds or notes. 21 NYCRR § 9750.1.

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\* The bracketed word has been inserted by the Publisher.

## § 3237. Capital reserve fund

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1. The corporation shall create and establish one or more special funds (each herein referred to as a capital reserve fund), which may be funded initially from proceeds of bonds or notes of the corporation issued pursuant to this title, in an amount equal to the capital reserve fund requirement of the bonds or notes secured thereby. All amounts held in a capital reserve fund shall be used solely for the payment of principal of or interest on the bonds or notes secured thereby, sinking fund payments thereon, the redemption thereof and payments to providers of bond or note facilities in respect of payments of such principal, interest or sinking fund payments made by them, in accordance with the applicable provisions of any and all resolutions and trust indentures, if any, securing such bonds and notes. Any income or interest, not required to be rebated to the United States to provide for continued exclusion from gross income for federal income tax purposes of interest on the bonds and notes of the corporation, earned by, or increment to, the capital reserve fund due to the investment thereof, in excess of the amount thereof needed to pay interest on the bonds or notes issued to fund the capital reserve fund, shall be used to pay debt service on bonds or notes issued by the corporation. Any amounts released from a capital reserve fund shall be applied, or set aside to be applied when practicable, by the corporation to the payment of principal on the applicable bonds or notes, or to redemption thereof or to the providers of bond or note facilities.

2. In computing the amount of the capital reserve fund for the purposes of this section, obligations in which all or a portion of such fund shall be invested shall be valued at par if purchased at par or, if purchased at a premium above or a discount below par, the value at any given date obtained by dividing the total premium or discount at which such obligations were purchased by the number of interest payment dates remaining to maturity on such obligations after such purchase, and by multiplying the number so calculated by the number of interest payment dates having passed since the date of such purchase; and (i) in the case of such obligations purchased at a premium, by deducting the product thus obtained from the purchase price; and (ii) in the case of such obligations purchased at a discount, by adding the product thus obtained to the purchase price. In lieu of a deposit of money or obligations to the capital reserve fund, the corporation, having due regard for the security and marketability of all affected bonds and notes, may satisfy the whole or any portion of the capital reserve fund requirement by providing one or more surety agreements,

insurance agreements, letters of credit or other type of agreement or arrangement satisfying the provisions of all applicable resolutions or trust indentures, if any, each of which provides for the availability, at all times required thereunder, of the amount of money or the value of the obligations in lieu of the deposit of which such agreement or arrangement is provided.

## History

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Add, L 1990, ch 220, § 1, eff June 11, 1990; amd, L 1991, ch 2, § 4, eff Jan 29, 1991.

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## § 3238. Payments to local governments

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The local government assistance corporation shall not issue obligations for payments to local governments unless an appropriation or appropriations have been enacted providing for the determination of the amount and manner of payments to local governments. Payments to local governments from the net proceeds of the obligations of the corporation shall be for any or all of the following purposes:

1. elementary and secondary education, community college aid and support for tuition assistance programs;
2. payment of the nonfederal share of local medicaid costs; and
3. other local assistance programs, including revenue sharing assistance, aid for health and the improvement of environmental quality, housing initiatives, mental health and drug abuse programs, mass transportation and highway and bridge programs.

## History

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Add, L 1990, ch 220, § 1, eff June 11, 1990.

Annotations

## Research References & Practice Aids

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### Cross References:

This section referred to in § 3236.

## NY CLS Pub A § 3238-a

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 10-B [New York Local Government Assistance Corporation] (Title 4) > Title 4 New York Local Government Assistance Corporation (§§ 3231 — 3249)*

### **§ 3238-a. Payment to city of New York.**

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1. Notwithstanding any inconsistent provision of law, the corporation shall transfer to the city of New York one hundred seventy million dollars from the resources of the corporation pursuant to section thirty-two hundred thirty-nine of this title. Such payment shall be made during each city fiscal year; provided, however, that on and after July first, two thousand twenty, the obligation of the corporation to make such payments shall be terminated if all outstanding bonds of the sales tax asset receivable corporation that are secured by the corporation's payments described in this subdivision have been fully paid and discharged by means of a legal defeasance in accordance with the trust indenture under which they were issued before July first, two thousand twenty-one, and in addition the corporation has paid to the city of New York or to its assignee if such payments have been assigned pursuant to this subdivision, the sum of forty-six million dollars on or before June thirtieth, two thousand twenty-one. Such payments from the corporation shall be made from the fund established by section ninety-two-r of the state finance law and in accordance with the provisions thereof.

2. The city of New York, acting by the mayor alone, may assign all or any portion of such amount to any not-for-profit corporation incorporated pursuant to section fourteen hundred eleven of the not-for-profit corporation law and, upon such assignment, the amount so assigned shall be the property of such not-for-profit corporation for all purposes. Following notice from the city of New York to the corporation and the comptroller of such assignment, such payment shall be made directly to the city's assignee. If such not-for-profit corporation issues bonds and/or notes, the state does hereby pledge and agree with the holders of any issue of bonds and/or notes secured by such a pledge that the state will not limit or alter the rights vested in such not-for-profit corporation to fulfill the terms of any agreements made with such holders or in any way impair the rights and remedies of such holders or the security for such bonds and/or notes until such bonds and/or notes, together with the interest thereon and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully paid and discharged. The foregoing pledge and agreement may be included in any agreement with the holders of such bonds or notes. Nothing contained in this section shall be deemed to restrict the right of the state to amend, modify, repeal or

otherwise alter statutes imposing or relating to the taxes subject to such assignment, but such taxes shall in all events continue to be so payable, as assigned, so long as any such taxes are imposed.

3. Proceeds of state supported debt, as defined in subdivision one of section sixty-seven-a of the state finance law, or other available monies, may be provided to the trustee for the bonds of the sales tax asset receivable corporation secured by the corporation's payments described in subdivision one of this section in an amount sufficient to fully pay and discharge such bonds by means of a legal defeasance of all such outstanding bonds in accordance with the trust indenture under which they were issued. So long as such bonds are legally defeased and the corporation has paid to the city of New York or to its assignee if such payments have been assigned pursuant to this subdivision, the sum of forty-six million dollars on or before June thirtieth, two thousand twenty-one the corporation's obligation contained in subdivision one of this section to transfer funds to the city of New York shall be deemed satisfied and fully discharged. Upon any such legal defeasance of such bonds, the sales tax asset receivable corporation shall no longer be deemed a local authority within the meaning of subdivision two of section two of this chapter and the provisions of this chapter, including, without limitation, the provisions of article nine of this chapter, shall no longer be applicable to the sales tax asset receivable corporation.

4. Notwithstanding any inconsistent provision of law, the dormitory authority of the state of New York and the New York state urban development corporation are hereby authorized to issue bonds in one or more series pursuant to article five-C or article five-F of the state finance law in an aggregate principal amount sufficient to directly or indirectly (i) finance the legal defeasance or payment of all of the outstanding bonds of the sales tax asset receivable corporation secured by the corporation's payments described in subdivision one of this section, (ii) one or more related debt service reserve funds, and (iii) costs of issuance attributable to such bonds, and the issuance of such bonds is hereby determined to be for an "authorized purpose", as defined in subdivision two of section sixty-eight-a and subdivision two of section sixty-nine-m of the state finance law, as the case may be.

## History

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Add, L 2003, ch 62, § 1 (Part A4), eff July 1, 2003; amd, L 2003, ch 63, § 1 (Part V), eff July 1, 2003; L 2021, ch 59, § 51 (Part JJJ), effective April 19, 2021.

Annotations

## Notes

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### Editor's Notes:

**Laws 2003, ch 62, § 3 (Part A4)**, eff July 1, 2003, provides as follows:

§ 3. This act shall take effect on the first of July next succeeding the date on which it shall have become a law and shall expire and be deemed repealed on July 1, 2034.

**Laws 2021, ch 59, § 61 (Part JJJ)**, eff April 19, 2021, provides:

§ 61. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2021; provided, however, that the provisions of sections one, one-a, two, three, four, five, six, seven, eight, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty-one, and twenty-two-a of this act shall expire March 31, 2022 when upon such date the provisions of such sections shall be deemed repealed; provided further that sections forty-four and sixty of this act shall be deemed to have been in full force and effect on and after April 1, 2020; and provided further that the amendments to section 3238-a of the public authorities law made by section fifty-one of this act shall be subject to the repeal of such section and shall expire and be deemed repealed therewith.

### **Amendment Notes**

**The 2021 amendment by ch 59, § 51 (Part JJJ)**, added the (1) designation; rewrote (1); added the (2) designation; and added (3) and (4).

## **Notes to Decisions**

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### **1. Constitutionality**

Court declined to enjoin the City of New York and the Sales Tax Asset Receivable Corporation from implementing the Municipal Assistance Corporation Refinancing Act after the Local Government Assistance Corporation (LGAC) argued that the Act it involved an unconstitutional multi-year obligation because it did not subject the annual payments to a referendum or to an appropriation by the legislature; N.Y. Pub. Auth. Laws § 3238-a required that payments to the city be made in accordance with N.Y. State Fin. Law § 92-r, which required an appropriation prior to payment, and although the legislature had modified N.Y. Pub. Auth. Laws § 3240(5), it left intact § 3240(3), which required that payments to the LGAC be appropriated. *Local Gov't Assistance Corp. v Sales Tax Asset Receivable Corp.*, 764 N.Y.S.2d 577, 1 Misc. 3d 272, 2003 N.Y. Misc. LEXIS 1090 (N.Y. Sup. Ct. 2003), app. dismissed in part, 5 A.D.3d 829, 773 N.Y.S.2d 460, 2004 N.Y. App. Div. LEXIS 2234 (N.Y. App. Div. 3d Dep't 2004).

Plain reading of the phrase “notwithstanding any inconsistent provision of law” in N.Y. Pub. Auth. Law § 3238-a reveals an intent on the part of the Legislature to require the Local Government Assistance Corporation (LGAC) to make the annual payments to New York City, even if some other provision would prohibit LGAC from making payments of this sort; N.Y. Pub. Auth. Law § 3241(1) merely confirms the priority of payment set forth in LGAC’s contract with its bondholders and does not prohibit LGAC from making such payments to the City; thus, while N.Y. Pub. Auth. Law § 3238-a requires LGAC to make annual payments to the City, it does not modify or repeal the State’s pledge to honor the contractual rights and remedies of LGAC’s bondholders pursuant to § 3241(1) and,

therefore, does not violate U.S. Const. art. I, § 10. *Local Gov't Assistance Corp. v Sales Tax Asset Receivable Corp.*, 2 N.Y.3d 524, 780 N.Y.S.2d 507, 813 N.E.2d 587, 2004 N.Y. LEXIS 1049 (N.Y. 2004).

Amended sentence of N.Y. Pub. Auth. Law § 3240(5) was intended to apply only to the previous sentence, not the entire subdivision because, reading the Municipal Assistance Corporation Refinancing Act, 2003 N.Y. Laws ch. 62, part A4; 2003 N.Y. Laws ch. 63, part V, as a whole, other provisions of the Act explicitly require that the payments be subject to annual legislative appropriation, including (1) N.Y. Pub. Auth. Law § 3238-a's provision requiring payments to be made from the Tax Fund established by N.Y. State Fin. Law § 92-5(1) and in accordance with the appropriation requirement of § 92-r(5)(a); (2) N.Y. Pub. Auth. Law § 3240(1)'s requirement that the Local Government Assistance Corporation (LGAC) include the payments to New York City in its annual certification, and (3) § 3240(3)'s requirement that the Comptroller can only pay the amount certified by the LGAC only if it has first been appropriated by the State. Thus, the Act does not violate the appropriation requirements of N.Y. Const. art. VII, § 11. *Local Gov't Assistance Corp. v Sales Tax Asset Receivable Corp.*, 2 N.Y.3d 524, 780 N.Y.S.2d 507, 813 N.E.2d 587, 2004 N.Y. LEXIS 1049 (N.Y. 2004).

Debt under N.Y. Const. art. VIII, § 2 can arise only where the municipality has incurred a legal obligation to fund the public benefit corporation's debt service to its bondholders should the corporation default on its obligation; thus, New York City's assignment of its right under N.Y. Pub. Auth. Law § 3238-a to receive the Local Government Assistance Corporation's (LGAC) annual payment to a non-profit organization, in exchange for the proceeds on the bonds that the non-profit would issue, was not a debt of the City requiring a pledge of the City's faith and credit under N.Y. Const. art. VIII, § 2 where the City had no legal obligations either to the nonprofit or to its bondholders should LGAC fail to make its payment to the non-profit. *Local Gov't Assistance Corp. v Sales Tax Asset Receivable Corp.*, 2 N.Y.3d 524, 780 N.Y.S.2d 507, 813 N.E.2d 587, 2004 N.Y. LEXIS 1049 (N.Y. 2004).

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## § 3239. Resources of the corporation

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1. Subject to the provisions of this title, the directors of the corporation shall receive, accept, invest, administer, expend and disburse for its corporate purposes all monies for the corporation from whatever sources derived including:
  - (a) payments by the state pursuant to the provisions of section three thousand two hundred forty of this title; and
  - (b) any other payments, gifts, or appropriations to the corporation from any other source.
2. The monies of the corporation shall be held by the corporation and may be invested as provided in subdivision ten of section thirty-two hundred thirty-five of this title. Subject to provisions of any contract with bondholders or noteholders, all monies received by the corporation other than as proceeds of its bonds or notes which, together with other monies of the corporation available for the operating expenses of the corporation, the payment of debt service and the other purposes listed in section thirty-two hundred forty of this title, exceed the amount required for such purposes shall be applied by the corporation to the acceleration of the payment of principal on the bonds or notes of the corporation or to the redemption thereof.
3. The comptroller or legally authorized representative, from time to time may examine the books and accounts of the corporation, including its receipts, disbursements, contracts, reserves, investments, and any other matters relating to its financial standing. Such an examination should be conducted by the comptroller or such legally authorized representative at least once every five years; in lieu of such an examination, the comptroller may accept from the corporation an external examination of the books and accounts made at the request of the directors of the corporation.

## History

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Add, L 1990, ch 220, § 1, eff June 11, 1990.

## Notes to Decisions

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### 1. Applicability

Agreement with bondholders, pursuant to N.Y. Pub. Auth. Law § 3241(1) was not breached by the requirement under N.Y. Pub. Auth. Law § 3238-a that mandated a \$170,000,000 payment to New York City because the payments were not made at the expense of existing bondholders and the payment was subject to an annual appropriation; if there was an annual shortfall, nothing in N.Y. Pub. Auth. Law 3239(1) required that the payment be made. *Local Gov't Assistance Corp. v Sales Tax Asset Receivable Corp.*, 5 A.D.3d 829, 773 N.Y.S.2d 460, 2004

N.Y. App. Div. LEXIS 2234 (N.Y. App. Div. 3d Dep't), app. denied, 2 N.Y.3d 731, 778 N.Y.S.2d 452, 810 N.E.2d 904, 2004 N.Y. LEXIS 494 (N.Y. 2004), modified, 2 N.Y.3d 524, 780 N.Y.S.2d 507, 813 N.E.2d 587, 2004 N.Y. LEXIS 1049 (N.Y. 2004).

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## § 3240. Payments to the corporation

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1. [Eff until July 1, 2034] Not less than one hundred twenty days before the beginning of each fiscal year of the corporation (but not later than October first, nineteen hundred ninety, for the fiscal year ending March thirty-first, nineteen hundred ninety-one) the chairperson of the corporation shall certify to the state comptroller and to the governor a schedule of cash requirements for such fiscal year. The total amount so certified for such fiscal year shall be equal to the total amount of the debt service then due on the bonds and notes of the corporation, including payments of interest and principal (including sinking fund payments) including payments required to be made pursuant to section thirty-two hundred thirty-eight-a of this title, together with:

- (a) the amount, if any, due to any provider of any bond or note facility, representing payments made by it as provided in the applicable resolution or trust indenture as a result of any previous failure of the state to make any payment provided for in this section, including any related reasonable interest, fees or charges so provided,
- (b) the amount, if any, required to restore the capital reserve fund to the capital reserve fund requirement to the extent any deficiency therein has resulted directly or indirectly from failure by the state to make any payment provided for in this section,
- (c) the amount, if any, required to be rebated to the United States to provide for continued federal tax exemption for bonds and notes of the corporation, and
- (d) the expenses of the establishment and continued operating expenses of the corporation, but not in excess of one hundred thousand dollars, exclusive of trustees' fees, fees payable to providers of bond or note facilities, fees for issuing and paying agents, remarketing agents and dealers, counsels, financial advisors, independent auditors, providers of interest rate exchange agreements, rating agencies, transfer or information agents, the publication of advertisements and notices, surety arrangements, and printers; fees or charges incurred by the corporation to comply with applicable federal and state securities or tax laws; and any other costs of issuance in excess of the amount provided therefor in the proceeds of the sale of bonds or notes of the corporation, to the extent that any

of the foregoing amounts or expenses are not to be paid from other resources available to the corporation for such purpose.

1. [Eff July 1, 2034] Not less than one hundred twenty days before the beginning of each fiscal year of the corporation (but not later than October first, nineteen hundred ninety, for the fiscal year ending March thirty-first, nineteen hundred ninety-one) the chairperson of the corporation shall certify to the state comptroller and to the governor a schedule of cash requirements for such fiscal year. The total amount so certified for such fiscal year shall be equal to the total amount of the debt service then due on the bonds and notes of the corporation, including payments of interest and principal (including sinking fund payments) together with:

(a) the amount, if any, due to any provider of any bond or note facility, representing payments made by it as provided in the applicable resolution or trust indenture as a result of any previous failure of the state to make any payment provided for in this section, including any related reasonable interest, fees or charges so provided,

(b) the amount, if any, required to restore the capital reserve fund to the capital reserve fund requirement to the extent any deficiency therein has resulted directly or indirectly from failure by the state to make any payment provided for in this section,

(c) the amount, if any, required to be rebated to the United States to provide for continued federal tax exemption for bonds and notes of the corporation, and

(d) the expenses of the establishment and continued operating expenses of the corporation, but not in excess of one hundred thousand dollars, exclusive of trustees' fees, fees payable to providers of bond or note facilities, fees for issuing and paying agents, remarketing agents and dealers, counsels, financial advisors, independent auditors, providers of interest rate exchange agreements, rating agencies, transfer or information agents, the publication of advertisements and notices, surety arrangements, and printers; fees or charges incurred by the corporation to comply with applicable federal and state securities or tax laws; and any other costs of issuance in excess of the amount provided therefor in the proceeds of the sale of bonds or notes of the corporation, to the extent that any of the foregoing amounts or expenses are not to be paid from other resources available to the corporation for such purpose.

1-a. The chairperson of the corporation may revise such certification at such times as shall be determined by the chairperson, provided, however, that the chairperson of the corporation shall revise such certification not later than thirty days after the issuance of any bonds or notes of the corporation including refunding bonds, and the adoption of any interest rate exchange or other financial arrangement affecting the cash requirements of the corporation.

2. The schedule accompanying such certification shall provide for payments on such dates as the corporation deems appropriate to ensure that sufficient funds will be available from the sources identified in this section to enable it to meet its current obligations as they become due.

3. Upon receipt of such certification, or any revision thereof, the comptroller shall pay such amount to the corporation for payment or deposit in accordance with such certification, from the local government assistance tax fund established by section ninety-two-r of the state finance law or from any other amount appropriated for such purpose to the extent that moneys in such fund are insufficient for such purpose. Any such payment shall be made within thirty days of the receipt of the certification or at the time specified within the certification, whichever is later, provided that any such amounts shall have been first appropriated by the state.
4. [Eff until July 1, 2034] In any year in which the state appropriates money out of any other funds available to it directly for the payment of debt service of the corporation or for any other corporate purposes for which payments out of the local government assistance fund may be made, except any appropriated amount in respect of a deficiency in such fund, the amount certified by the chairperson of the corporation shall be reduced by the amount of such direct state payments. Provided however, this subdivision shall not apply for payments made pursuant to section thirty-two hundred thirty-eight-a of this title.
4. [Eff July 1, 2034] In any year in which the state appropriates money out of any other funds available to it directly for the payment of debt service of the corporation or for any other corporate purposes for which payments out of the local government assistance fund may be made, except any appropriated amount in respect of a deficiency in such fund, the amount certified by the chairperson of the corporation shall be reduced by the amount of such direct state payments.
5. [Eff until July 1, 2034] 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. The state, acting through the director of the budget, and the corporation may enter into, amend, modify, or rescind one or more agreements providing for the specific manner, timing, and amount of payments to be made under this section, but only in conformity with this section. Provided however, this subdivision shall not apply for payments made pursuant to section thirty-two hundred thirty-eight-a of this title.
5. [Eff July 1, 2034] 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. The state, acting through the director of the budget, and the corporation may enter into, amend, modify, or rescind one or more agreements providing for the specific manner, timing, and amount of payments to be made under this section, but only in conformity with this section.
6. Nothing contained in this title 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 sections eleven hundred five and eleven hundred ten of the tax law. The corporation shall not include within any resolution, contract or agreement with holders of the bonds or notes issued under this title 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 sections eleven hundred five and eleven hundred ten of the tax law.

## History

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Add, L 1990, ch 220, § 1, eff June 11, 1990; amd, L 1991, ch 2, §§ 5, 6, eff Jan 29, 1991; L 2003, ch 62, § 2 (Part A4), eff July 1, 2003.

Annotations

## Notes

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### Editor's Notes:

**Laws 2003, ch 62, § 3 (Part A4)**, eff July 1, 2003, expires and repealed July 1, 2034, provides as follows:

§ 3. This act shall take effect on the first of July next succeeding the date on which it shall have become a law and shall expire and be deemed repealed on July 1, 2034.

## Notes to Decisions

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### 1. Constitutionality

Court declined to enjoin the City of New York and the Sales Tax Asset Receivable Corporation from implementing the Municipal Assistance Corporation Refinancing Act after the Local Government Assistance Corporation (LGAC) argued that the Act involved an unconstitutional multi-year obligation because it did not subject the annual payments to a referendum or to an appropriation by the legislature; N.Y. Pub. Auth. Laws § 3238-a required that payments to the city be made in accordance with N.Y. State Fin. Law § 92-r, which required an appropriation prior to payment, and although the legislature had modified N.Y. Pub. Auth. Laws § 3240(5), it left intact § 3240(3), which required that payments to the LGAC be appropriated. *Local Gov't Assistance Corp. v Sales Tax Asset Receivable Corp.*, 764 N.Y.S.2d 577, 1 Misc. 3d 272, 2003 N.Y. Misc. LEXIS 1090 (N.Y. Sup. Ct. 2003), app. dismissed, in part, 5 A.D.3d 829, 773 N.Y.S.2d 460, 2004 N.Y. App. Div. LEXIS 2234 (N.Y. App. Div. 3d Dep't 2004).

Municipal Assistance Corporation Refinancing Act, 2003 N.Y. Laws ch. 62, part A4; 2003 N.Y. Laws ch. 63, part V, does not violate N.Y. Const. art. VII, § 11 because it ensures that any payments to New York City are subject to an annual legislative appropriation notwithstanding the amendment to N.Y. Pub. Auth. Law § 3240(5) and the entire purpose of channeling the annual payments through the Local Government Assistance Corporation (LGAC) is to make use of LGAC's trapping mechanism, which gives the Legislature an incentive, but not an obligation, to appropriate. *Local Gov't Assistance Corp. v Sales Tax Asset Receivable Corp.*, 2 N.Y.3d 524, 780 N.Y.S.2d 507, 813 N.E.2d 587, 2004 N.Y. LEXIS 1049 (N.Y. 2004).

Amended sentence of N.Y. Pub. Auth. Law § 3240(5) was intended to apply only to the previous sentence, not the entire subdivision because, reading the Municipal Assistance Corporation Refinancing Act, 2003 N.Y. Laws ch. 62, part A4; 2003 N.Y. Laws ch. 63, part V, as a whole, other provisions of the Act explicitly require that the payments be subject to annual legislative appropriation, including (1) N.Y. Pub. Auth. Law § 3238-a's provision requiring payments to be made from the Tax Fund established by N.Y. State Fin. Law § 92-5(1) and in accordance with the appropriation requirement of § 92-r(5)(a); (2) N.Y. Pub. Auth. Law § 3240(1)'s requirement that the Local Government Assistance Corporation (LGAC) include the payments to New York City in its annual certification, and (3) § 3240(3)'s requirement that the Comptroller can only pay the amount certified by the LGAC only if it has first been appropriated by the State. Thus, the Act does not violate the appropriation requirements of N.Y. Const. art. VII, § 11. *Local Gov't Assistance Corp. v Sales Tax Asset Receivable Corp.*, 2 N.Y.3d 524, 780 N.Y.S.2d 507, 813 N.E.2d 587, 2004 N.Y. LEXIS 1049 (N.Y. 2004).

## Research References & Practice Aids

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### Cross References:

This section referred to in § 3239.

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## NY CLS Pub A § 3241

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 10-B [New York Local Government Assistance Corporation] (Title 4) > Title 4 New York Local Government Assistance Corporation (§§ 3231 — 3249)*

### § 3241. Agreement with the state

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1. The state does hereby pledge to and agree with the holders of any bonds or notes issued under this title and with the providers of any bond or note facilities that the state will not limit or alter the rights hereby vested in the corporation to fulfill the terms of any agreements made with the said holders or the said providers, or in any way impair the rights and remedies of such holders or providers until such bonds and notes, together with the interest thereon, with interest on any unpaid installments of interest, and all obligations of the corporation to such providers, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders or providers, are fully met and discharged. The corporation is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds or notes or with any such providers.

2. In order to induce prospective purchasers to purchase bonds and notes of the corporation, the state hereby further pledges and agrees with the holders of bonds and notes of the corporation that, while any bonds or notes of the corporation are outstanding, the state will abide by and not amend the provisions of section three thousand two hundred forty-one-a of this title other than amendments which implement or clarify any ambiguity in its terms in ways that do not have a material adverse effect on the protections established in such section. The corporation shall include the pledge and agreement set forth herein in any agreement with the holders of its bonds and notes.

### History

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Add, L 1990, ch 220, § 1, eff June 11, 1990.

Annotations

### Notes to Decisions

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## **1. Constitutionality**

## **2. Applicability**

### **1. Constitutionality**

Plain reading of the phrase “notwithstanding any inconsistent provision of law” in N.Y. Pub. Auth. Law § 3238-a reveals an intent on the part of the Legislature to require the Local Government Assistance Corporation (LGAC) to make the annual payments to New York City, even if some other provision would prohibit LGAC from making payments of this sort; N.Y. Pub. Auth. Law § 3241(1) merely confirms the priority of payment set forth in LGAC’s contract with its bondholders and does not prohibit LGAC from making such payments to the City; thus, while N.Y. Pub. Auth. Law § 3238-a requires LGAC to make annual payments to the City, it does not modify or repeal the State’s pledge to honor the contractual rights and remedies of LGAC’s bondholders pursuant to § 3241(1) and, therefore, does not violate U.S. Const. art. I, § 10. *Local Gov’t Assistance Corp. v Sales Tax Asset Receivable Corp.*, 2 N.Y.3d 524, 780 N.Y.S.2d 507, 813 N.E.2d 587, 2004 N.Y. LEXIS 1049 (N.Y. 2004).

### **2. Applicability**

Agreement with bondholders, pursuant to N.Y. Pub. Auth. Law § 3241(1) was not breached by the requirement under N.Y. Pub. Auth. Law § 3238-a that mandated a \$170,000,000 payment to New York City because the payments were not made at the expense of existing bondholders and the payment was subject to an annual appropriation; if there was an annual shortfall, nothing required that the payment be made. *Local Gov’t Assistance Corp. v Sales Tax Asset Receivable Corp.*, 5 A.D.3d 829, 773 N.Y.S.2d 460, 2004 N.Y. App. Div. LEXIS 2234 (N.Y. App. Div. 3d Dep’t), app. denied, 2 N.Y.3d 731, 778 N.Y.S.2d 452, 810 N.E.2d 904, 2004 N.Y. LEXIS 494 (N.Y. 2004), modified, 2 N.Y.3d 524, 780 N.Y.S.2d 507, 813 N.E.2d 587, 2004 N.Y. LEXIS 1049 (N.Y. 2004).

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## NY CLS Pub A § 3241-a

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 10-B [New York Local Government Assistance Corporation] (Title 4) > Title 4 New York Local Government Assistance Corporation (§§ 3231 — 3249)*

### § 3241-a. Limitation on issuance of tax and revenue anticipation notes by the state

1. Except as otherwise provided in subdivision two of this section, the aggregate principal amount of tax and revenue anticipation notes issued pursuant to section nine of article seven of the constitution in any fiscal year by the state and maturing in such fiscal year shall not exceed the amount of four billion seven hundred million dollars, less the aggregate principal amount of bonds and notes theretofore issued by the corporation exclusive of any bonds or notes referred to in subparagraph (i) or (iii) of paragraph (a) of subdivision eight of section thirty-two hundred thirty-six of this title, or excluded by paragraph (b) of such subdivision.
2. The state may issue in any fiscal year tax and revenue anticipation notes in an aggregate principal amount in excess of the limit on issuance set forth in subdivision one of this section, if and only if there shall have first been executed in such fiscal year a written certificate signed by the governor, the temporary president of the senate and the speaker of the assembly, which shall set forth:
  - (a) the emergency or extraordinary factors or factors unanticipated at the time of adoption of the budget for the fiscal year in which such borrowing is to be made that gave rise to the need for the issuance of tax and revenue anticipation notes in excess of such limit, and
  - (b) the amount of tax and revenue anticipation notes projected to be issued in each of the three fiscal years commencing subsequent to the fiscal year in which such limit was originally exceeded, which will result in the elimination of such excess as soon as practicable but in no event later than by the end of the third fiscal year commencing subsequent to the fiscal year in which such limit was originally exceeded.
3. The need for the issuance referred to in paragraph (a) of subdivision two of this section shall be in the conclusive, final and binding discretion of the signatories to the written certificate described in subdivision two of this section and not subject to judicial challenge or review.
4. In no event shall a written certificate referred to in subdivision two of this section be issued in more than four consecutive fiscal years.

5. In the event of any inconsistency between this section and any amendment to the constitution relating to the issuance of tax and revenue anticipation notes, the provisions of such constitutional amendment shall control.

6. Nothing contained in this section shall be deemed to relieve the state of its obligation to repay tax and revenue anticipation notes within one year from the date of issuance thereof.

## History

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Add, L 1990, ch 220, § 1, eff June 11, 1990.

Annotations

## Research References & Practice Aids

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### Cross References:

This section referred to in § 3241.

## NY CLS Pub A § 3242

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1—11) > Article 10-B [New York Local Government Assistance Corporation] (Title 4) > Title 4 New York Local Government Assistance Corporation (§§ 3231 — 3249)*

### **§ 3242. State and local governments not liable on bonds and notes**

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The notes, bonds or other obligations of the corporation shall not be a debt of the state or of any local government, and neither the state nor any local government shall be liable thereon, nor shall they be payable out of any funds other than those of the corporation; and such bonds and notes shall contain on the face thereof a statement to such effect.

### **History**

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Add, L 1990, ch 220, § 1, eff June 11, 1990.

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## § 3243. Remedies of bondholders and noteholders

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1. Subject to the provisions of section three thousand two hundred thirty-six of this title, in the event that the corporation shall default in the payment of principal of or interest on or sinking fund payment on any issue of bonds or notes after the same shall become due, whether at maturity or upon call for redemption, or in the event that the corporation or the state shall default in any agreement made with the holders of any issue of bonds or notes, the holders of twenty-five per centum in aggregate principal amount of the bonds or notes of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county of Albany and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds or notes for the purposes herein provided.
2. Such trustee, or any trustee appointed under section three thousand two hundred thirty-six of this title, may, and upon written request of the holders of twenty-five per centum in principal amount of such bonds or notes then outstanding shall, in his or its own name:
  - (a) by suit, action or proceeding in accordance with the civil practice law and rules, enforce all rights of the bondholders or noteholders, including the right to require the corporation to carry out any agreement with such holders and to perform its duties under this title;
  - (b) bring suit upon such bonds and notes;
  - (c) by action or suit, require the corporation to account as if it were the trustee of an express trust for the holders of such bonds or notes;
  - (d) by action or suit, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds or notes; and
  - (e) declare all such bonds or notes due and payable, and if all defaults shall be made good, then, with the consent of the holders of twenty-five per centum of the principal amount of such bonds or notes then outstanding annul such declaration and its consequences provided, however, that nothing herein shall preclude the corporation from agreeing that consent of the provider of a bond or note facility is

required for an acceleration of related bonds or notes in the event of a default other than a failure to pay principal of or interest on the bonds or notes when due.

3. The supreme court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of such bondholders or noteholders. The venue of any such suit, action or proceeding shall be laid in the county of Albany.
4. Before declaring the principal of bonds or notes due and payable, the trustee shall first give thirty days' notice in writing to the corporation, the governor, the comptroller, the temporary president of the senate, the speaker of the assembly and to the attorney general of the state.

## History

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Add, L 1990, ch 220, § 1, eff June 11, 1990; amd, L 1991, ch 2, § 7, eff Jan 29, 1991.

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## § 3244. Bonds and notes as legal investments

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The bonds and notes of the corporation are hereby made securities in which all public officers and bodies of this state and all municipalities and political subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or in other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. The bonds and notes are also hereby made securities which may be deposited with and may be received by all public officers and bodies of the state and all municipalities, political subdivisions and public corporations for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized.

## History

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Add, L 1990, ch 220, § 1, eff June 11, 1990.

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## NY CLS Pub A § 3245

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1 — 11) > Article 10-B [New York Local Government Assistance Corporation] (Title 4) > Title 4 New York Local Government Assistance Corporation (§§ 3231 — 3249)*

### § 3245. Exemption from taxation

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1. It is hereby determined that the creation of the corporation and the carrying out of its corporate purpose is in all respects a public and governmental purpose for the benefit of the people of the state and for the improvement of their health, safety, welfare, comfort and security, and that said purposes are public purposes and that the corporation will be performing an essential governmental function in the exercise of the powers conferred upon it by this title.
2. The property of the corporation and its income and operations shall be exempt from taxation.
3. The bonds and notes of the corporation issued pursuant to this title and the income therefrom and all its fees, charges, gifts, grants, revenues, receipts, and other monies received or to be received, pledged to pay or secure the payment of such bonds or notes shall at all times be free from taxation, except for estate and gift taxes on transfers.
4. In the case of any bonds or notes of the corporation, interest on which is intended to be exempt from federal income tax, the corporation shall prescribe restrictions on the use of the proceeds thereof and related matters as are necessary to assure such exemption, and the recipients of such proceeds shall be bound thereby to the extent such restrictions shall be made applicable to them.

### History

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Add, L 1990, ch 220, § 1, eff June 11, 1990.

## § 3246. Employees of the corporation

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1. In order to reduce its operating expenses the corporation shall, to the extent practicable, utilize existing employees of the state, pursuant to section thirty-two hundred forty-eight of this title, hiring its own employees only if the necessary functions of the corporation cannot be performed without the hiring of such employees. Employee compensation shall be paid only from appropriations made to the corporation by law.
2. In accordance with the provisions of section seventy of the civil service law and any applicable collective bargaining agreement, the state and the corporation shall have the power to provide for the transfer to the corporation of such agents, employees and facilities of the state as shall enable the corporation to fulfill its corporate purposes. Employees of the state so transferred shall be appointed, without further examination, to the corporation in the same or equivalent classification and position they hold at the time of the transfer.
3. A transferred employee shall remain in the same collective bargaining unit as was the case prior to his or her transfer; successor employees to the positions held by such transferred employees shall, consistent with the provisions of article fourteen of the civil service law, be included in the same unit as their predecessors. Employees serving in positions in newly created titles shall be assigned to such same collective bargaining unit if they would have been assigned to such unit were such titles created prior to the establishment of the corporation. Nothing contained in this title shall be construed to diminish (a) the rights of employees pursuant to a collective bargaining agreement or (b) to affect existing law with respect to an application to the public employment relations board seeking a designation by the board that certain persons are managerial or confidential.
4. The corporation and its employees shall be subject to article fourteen of the civil service law and for all purposes the corporation shall be deemed a "public employer".

## History

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Add, L 1990, ch 220, § 1, eff June 11, 1990.

## § 3247. Actions against the corporation

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1. An action against the corporation for death, personal injury or property damage or founded on tort shall not be commenced more than one year and ninety days after the cause of action thereof shall have accrued nor unless a notice of claim shall have been served on a director or the corporation or officer or employee thereof designated by the corporation for such purpose, within the time limited by, and in compliance with the requirements of section fifty-e of the general municipal law.
2. The venue of every action, suit or special proceeding brought against the corporation shall be laid in the county of Albany.
3. Neither any director of the corporation nor any officer, employee, or agent of the corporation, while acting within the scope of their authority, shall be subject to any personal liability resulting from exercising or carrying out of any of the corporation's purposes or powers.

## History

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Add, L 1990, ch 220, § 1, eff June 11, 1990.

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## NY CLS Pub A § 3248

*New York Consolidated Laws Service > Public Authorities Law (Arts. 1—11) > Article 10-B [New York Local Government Assistance Corporation] (Title 4) > Title 4 New York Local Government Assistance Corporation (§§ 3231 — 3249)*

### § 3248. Assistance to the corporation

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With the consent of the governor, comptroller or attorney general as the case may be, the corporation may use agents, employees and facilities of the state paying to the affected agency its agreed proportion of the compensation or costs.

### History

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Add, L 1990, ch 220, § 1, eff June 11, 1990.

Annotations

### Research References & Practice Aids

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#### Cross References:

This section referred to in § 3246.

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End of Document

## § 3249. Preference for actions or proceeding\* against the corporation

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Any action or proceeding to which the corporation or the people of the state may be parties, in which any question arises as to the validity of this title, shall be preferred over all other civil causes of action or cases, except election causes of action or cases, in all courts of the state and shall be heard and determined in preference to all other civil business pending therein, except election causes, irrespective of position on the calendar. The same preference shall be granted upon application of the corporation or its counsel in any action or proceeding questioning the validity of this title in which the corporation may be allowed to intervene. The venue of any such action or proceeding shall be laid in the supreme court of the county of Albany.

## History

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Add, L 1990, ch 220, § 1, eff June 11, 1990.

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End of Document

\* Does not conform with Title schedule.

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