

STATE OF NEW YORK

5905

2005-2006 Regular Sessions

IN SENATE

June 22, 2005

Introduced by Sen. VOLKER -- (at request of the Governor) -- read twice

and ordered printed, and when printed to be committed to the Committee

on Rules

AN ACT to amend the public authorities law and the tax law, in relation

to creating the Erie county fiscal stability authority

The People of the State of New York, represented in Senate and Assem-

bly, do enact as follows:

1 Section 1. Legislative findings. The legislature hereby finds and

2 declares that a condition of fiscal stress exists in the county of Erie,

3 as highlighted in recent reports published by the state comptroller and

4 independent bond rating agencies. Such condition has contributed to a

5 loss of confidence by investors in short-term and long-term obligations

6 of the county after repeated downgrades and a current negative outlook

7 of the county's bond ratings, thereby significantly adding to the costs

8 of borrowing borne by the county of Erie taxpayers.

9 It is hereby further found and declared that the continued existence

10 of such condition of fiscal stress is contrary to the public interest of

11 the county and the state and seriously threatens to cause a decline in

12 the general prosperity and economic welfare of the inhabitants of the

13 county and the people of this state. It is in the public interest and is

14 the policy of this state to assist municipalities such as the county of

15 Erie in attempting to provide, without interruption, services essential

16 to their inhabitants while meeting their obligations to the
holders of
17 their outstanding securities. The impairment of the credit of the
county
18 of Erie may affect the ability of other municipalities in the
state to
19 issue their obligations at normal interest rates. Such effect
is a
20 matter of state concern.
21 It is hereby further found and declared that intervention to
provide
22 enhanced budgetary discipline and short-term budgetary relief is
neces-
23 sary to allow the county to restore enduring fiscal health and
the
EXPLANATION—Matter in italics (underscored) is new; matter in
brackets
[] is old law to be omitted.

S

LBD12093-04-5

S. 5905

2

1 availability of adequate funding for the provision of
essential
2 services.
3 It is hereby further found and declared that an advisory and
control
4 finance authority should be established to oversee the county's
budget,
5 financial and capital plans; to issue bonds, notes or other
obligations
6 to achieve budgetary savings and to finance short-term cash
flow or
7 capital needs; and, if necessary, to develop financial plans on
behalf
8 of the county if the county is unwilling or unable to take the
required
9 steps toward fiscal stability.
10 It is noted that section 12 of article 8 of the constitution
imposes a
11 duty on this legislature to restrict the power of taxation,
assessment,
12 borrowing money and contracting indebtedness so as to prevent
abuses in
13 taxation and assessments and in the contracting of indebtedness
by the
14 county.
15 In order to fulfill such duty and based upon the condition of

fiscal

16 stress in the county of Erie, the legislature through this act
creates
17 an Erie county fiscal stability authority with certain advisory,
borrow-
18 ing and control powers, and imposes on the county of Erie
certain
19 requirements as to budgetary operations and fiscal management,
including
20 minimum annual requirements to produce recurring budget
savings in
21 increasing amounts during the current year and over the next four years.

22 The agreements for financial and budgetary discipline between
the
23 authority and the county shall be for such period as is necessary
under
24 the standards set forth in this act to restore the county of
Erie to
25 fiscal integrity.

26 § 2. Sections 3900, 3901 and 3902 of the public authorities
law, as
27 renumbered by chapter 122 of the laws of 2003, are renumbered
sections
28 4000, 4001 and 4002.

29 § 3. Article 10-D of the public authorities law is amended by
adding a
30 new title 3 to read as follows:

31 TITLE 3
32 ERIE COUNTY FISCAL STABILITY AUTHORITY

33 Section 3950. Short title.
34 3950-a. Legislative declaration of need for state
intervention.

35 3951. Definitions.
36 3952. Erie county fiscal stability authority.
37 3953. Administration of the authority.
38 3954. General powers of the authority.
39 3955. Assistance to the authority; employees of the

authority.
40 3956. County fiscal year two thousand five budget
modification

41 and four-year financial plan.
42 3957. County financial plans.
43 3957-a. Efficiency incentive grants.
44 3958. Advisory period.
45 3959. Control period.
46 3960. Additional provisions.
47 3961. Declaration of need for financing assistance

to the
48 county.
49 3962. Bonds, notes or other obligations of the authority.
50 3963. Remedies of bondholders.
51 3964. Intercept of county tax revenues and state aid
revenues.

52 3965. Resources of the authority.
53 3966. Agreement with the state.

54 3967. Agreement with the county.
55 3968. Bonds, notes or other obligations legal for
investment
56 and deposit.

S. 5905 3

1 3969. Tax exemption.
2 3970. Actions against the authority.
3 3971. Audits.
4 3972. Effect of inconsistent provisions.
5 3973. Separability; construction.
6 § 3950. Short title. This title shall be known and may be cited
as the
7 “Erie county fiscal stability authority act”.
8 § 3950-a. Legislative declaration of need for state intervention.

The

9 legislature hereby finds and declares that the county of Erie is
facing
10 a severe fiscal crisis, and that the crisis cannot be resolved
absent
11 assistance from the state. The legislature further finds and
declares
12 that maintenance of a balanced budget by the county of Erie is a
matter
13 of overriding state concern, requiring the legislature to
intervene to
14 provide a means whereby: the long-term fiscal stability of the
county
15 will be assured, the confidence of investors in the county’s
bonds and
16 notes is preserved, and the economy of both the region and the
state as
17 a whole is protected.
18 § 3951. Definitions. For the purposes of this title,
unless the
19 context otherwise requires: 1. “Advisory period” means a period of
time
20 from the effective date of this title until the date when
(a) the
21 authority shall determine that for each fiscal year, through and
includ-
22 ing fiscal year two thousand twelve, that the county has adopted
and
23 adhered to budgets covering all expenditures the results of which
do not
24 show a major operating funds deficit when reported in accordance
with
25 generally accepted accounting principles, subject to the
provisions of
26 this title, and shall further determine that in the then current

fiscal

27 year there is a substantial likelihood that the results of the
county's
28 operations will not show a deficit in the major operating funds
when so
29 reported and (b) the comptroller shall certify that securities were
sold
30 by or for the benefit of the county during the fiscal year
immediately
31 preceding such date and the then current fiscal year in the
general
32 public market satisfied the financing requirements of the county
during
33 such period and that there is a substantial likelihood that such
securi-
34 ties can be sold in the general public market from such date
through the
35 end of the next succeeding fiscal year in amounts which will
satisfy
36 substantially all of the capital and cash flow requirements of the
coun-
37 ty during such period in accordance with the financial plan
then in
38 effect.

39 2. "Authority" or "Erie county fiscal stability authority" or

"ECFSA"

40 means the public benefit corporation created by this title.

41 3. "Bonds, notes or other obligations" means bonds, notes and
other

42 evidences of indebtedness, issued or incurred by the authority.

43 4. "Comptroller" means the comptroller of the county.

44 5. "Control period" means a period determined by the
authority in

45 accordance with section thirty-nine hundred fifty-nine of this title.

46 6. "County" means Erie county.

47 7. "County charter" means the county government law of Erie
county, as

48 amended.

49 8. "County executive" means the county executive of the county.

50 9. "County tax revenues" means net collections set aside for
county

51 purposes pursuant to subdivision (a) of section twelve hundred
sixty-two
52 of the tax law, from the county's sales and compensating use
taxes

53 imposed pursuant to the authority of subpart B of part one of
article

54 twenty-nine of the tax law.

55 10. "Covered organization" means any governmental agency,
public

56 authority or public benefit corporation which receives or may receive

S. 5905

4

1 moneys directly, indirectly or contingently from the county, but
exclud-

2 ing the authority and (a) any other governmental agency, public
authori-

3 ty or public benefit corporation specifically exempted from
the

4 provisions of this title by order of the authority upon
application of

5 such agency, public authority, or corporation to the authority or
on the

6 authority's own motion upon a finding by the authority that
such

7 exemption does not materially affect the ability of the county to
adopt

8 and maintain a budget pursuant to the provisions of this title, or (b)

9 any state public authority defined in section two hundred one
of the

10 civil service law, unless specifically named above; provided,
however,

11 no municipality or school district shall be treated as a covered
organ-

12 ization solely because it shares sales and compensating use tax
revenue

13 with the county, provided further, that the authority may
terminate any

14 exemption granted by order of the authority pursuant to this
subdivision

15 upon a determination that the circumstances upon which such
exemption

16 was granted are no longer applicable.

17 11. "Director of the budget" means the director of the budget
of the

18 state.

19 12. "ECFSA assistance" means: (a) the proceeds of any deficit
financ-

20 ing authorized by the authority; or (b) the amount of debt
service

21 savings in a given county fiscal year generated from the
proceeds of

22 bonds, notes or other obligations of the authority made available
to or

23 for the benefit of the county or any covered organization as
determined

24 by the authority, or some combination thereof pursuant to the
provisions

25 of sections thirty-nine hundred fifty-six and thirty-nine
hundred

26 fifty-seven of this title. Such assistance shall be made available
only
27 upon a declaration of need by the county pursuant to section
thirty-nine
28 hundred sixty-one of this title and the approval of the authority.
29 13. "Financeable costs" or "costs" means costs to finance (a)
amounts
30 necessary to finance a portion of the operating costs of the
county or
31 any covered organization as provided in sections thirty-nine
hundred
32 fifty-six and section thirty-nine hundred fifty-seven of this
title, to
33 the extent approved by the authority, (b) amounts necessary to
accom-
34 plish a refunding, repayment or restructuring of all or a portion
of the
35 county's outstanding indebtedness or that of any covered
organization,
36 © cash flow needs of the county or any covered organization, (d)
any
37 object or purpose of the county or any covered organization, for
which a
38 period of probable usefulness is prescribed in section 11.00
of the
39 local finance law, including the costs of any preliminary
studies,
40 surveys, maps, plans, estimates and hearings, or (e) incidental
costs,
41 including, but not limited to, legal fees, printing or engraving,
publi-
42 cation of notices, taking of title, apportionment of costs, and
capital-
43 ized interest, insurance premiums, costs related to items
authorized in
44 subdivisions seven through nine of section thirty-nine hundred
fifty-
45 four of this title or any underwriting or other costs
incurred in
46 connection with the financing thereof; provided however that,
to the
47 maximum extent practicable, all financeable costs shall not
adversely
48 affect the requirements of subdivision two of section
thirty-nine
49 hundred fifty-eight of this title.

50 14. "Financial plan" means the financial plan of the county and
the
51 covered organizations to be developed pursuant to section
thirty-nine
52 hundred fifty-seven of this title, as from time to time amended.

53 15. "Legislature" means the legislature of the county.

54 16. "Major operating funds" means the county general fund, the

social

55 services fund, the county road fund, the capital fund, the debt
service

S. 5905

5

1 fund, the sewer fund, together with any other funds of the county
or a

2 covered organization from time to time designated by the authority.

3 17. "Presiding officer" means the presiding officer of the
legislature

4 elected pursuant to the rules of the legislature.

5 18. "Projected gap" means the excess, if any, of annual
aggregate

6 projected expenditures over annual aggregate projected revenues for
the

7 major operating funds in each year of a financial plan as
determined by

8 the county and certified by the authority. For purposes of
determining

9 the projected gap in each fiscal year, annual aggregate projected
reven-

10 ues shall not include the amount of ECFSA assistance expected
to be

11 available for such fiscal year.

12 19. "Revenues" means revenues of the authority consisting of
county

13 tax revenues, state aid revenues, and all other aid, rents, fees,
charg-

14 es, payments and other income and receipts paid or payable
to the

15 authority or a trustee for the account of the authority to the
extent

16 such amounts are pledged to bondholders.

17 20. "State" means the state of New York.

18 21. "State aid" means aid and incentives for
municipalities, any

19 successor type of aid and any new aid appropriated by the state as
local

20 government assistance for the benefit of the county.

21 22. "State aid revenues" means state aid paid by the state
comptroller

22 to the authority pursuant to this title.

23 23. "State comptroller" means the comptroller of the state.

24 § 3952. Erie county fiscal stability authority. 1. There is
hereby

25 created the Erie county fiscal stability authority. The authority

shall

26 be a corporate governmental agency and instrumentality of the

state

27 constituting a public benefit corporation.

28 2. The authority shall conduct meetings as often as deemed
necessary

29 to accomplish its purposes, but not less than quarterly during a
control
30 period or annually during an advisory period.

31 3. The authority shall continue until its control, advisory or
other
32 responsibilities, and its liabilities have been met or
otherwise

33 discharged, which in no event shall be later than December
thirty-first,
34 two thousand thirty-nine. Upon the termination of the authority,
all of
35 its property and assets shall pass to and be vested in the county.

36 § 3953. Administration of the authority. 1. The authority
shall be
37 administered by seven directors appointed by the governor. Of the
seven
38 directors, one each shall be appointed on the written
recommendation of

39 the temporary president of the state senate, the speaker of the
state
40 assembly and the state comptroller, respectively. One member
appointed

41 directly by the governor and the members appointed on the
recommendation
42 of the temporary president of the state senate, the
recommendation of
43 the speaker of the state assembly and the recommendation of the
state

44 comptroller shall be residents of the county. Each director
shall be
45 appointed for a term of four years, provided however, that two
of the
46 directors first appointed by the governor shall serve for a term
ending

47 December thirty-first, two thousand nine, and the remaining five
direc-
48 tors first appointed shall serve for the following terms: the
directors

49 appointed on recommendation of the temporary president of the
state
50 senate, the speaker of the state assembly and the state
comptroller

51 shall serve for a term ending December thirty-first, two thousand
ten
52 and the two remaining directors first appointed directly by the
governor

53 shall serve for a term ending on December thirty-first, two
thousand
54 eleven. Each director shall hold office until his or her successor
has

55 been appointed and qualified. Thereafter each director shall
serve a

1 term of four years, except that any director appointed to fill a
vacancy

2 shall serve only until the expiration of his or her predecessor's term.

3 2. The governor shall designate a chairperson and a
vice-chairperson

4 from among the directors. The chairperson shall preside over all
meet-

5 ings of the directors and shall have such other duties as the
directors

6 may prescribe. The vice-chairperson shall preside over all
meetings of

7 the directors in the absence of the chairperson and shall have
such

8 other duties as the directors may prescribe.

9 3. The directors of the authority shall serve without salary, but
each

10 director shall be reimbursed for actual and necessary expenses
incurred

11 in the performance of such director's official duties as a
director of

12 the authority.

13 4. Notwithstanding any inconsistent provision of any general,
special

14 or local law, ordinance, resolution or charter, no officer,
member or

15 employee of the state, any city, county, town or village, any
govern-

16 mental entity operating any public school or college, any
school

17 district or any other public agency or instrumentality which
exercises

18 governmental powers under the laws of the state, shall forfeit
his or

19 her office or employment by reason of his or her acceptance of
appoint-

20 ment as a director, officer or employee of the authority; nor
shall

21 service as such director, officer or employee of the authority be
deemed

22 incompatible or in conflict with such office or employment.

23 5. Four directors shall constitute a quorum for the transaction
of any

24 business or the exercise of any power of the authority. No action
shall

25 be taken by the authority except pursuant to a favorable vote
of at

26 least four directors participating in a meeting at which such
action is

27 taken.

28 6. The authority shall appoint a treasurer and may appoint

officers

29 and agents as it may require and prescribe their duties.

30 7. At least annually, commencing no more than one year after the
date

31 on which authority bonds, notes or other obligations are first
issued,

32 the authority shall report to the county executive, legislature,
comp-

33 troller, the director of the budget, the chair of the state
senate

34 finance committee, the chair of the state assembly ways and
means

35 committee and the state comptroller on the amount of financing
and the

36 cost savings for the county over the past year.

37 § 3954. General powers of the authority. Except as otherwise
limited

38 by this title, the authority shall have the following powers in
addition

39 to those specially conferred elsewhere in this title, subject
only to

40 agreements with bondholders:

41 1. to sue and be sued;

42 2. to have a seal and alter the same at pleasure;

43 3. to make and alter by-laws for its organization and management

and

44 subject to agreements with its bondholders, to make and alter
rules and

45 regulations governing the exercise of its powers and fulfillment of
its

46 purposes under this title;

47 4. to make and execute contracts and all other instruments or
agree-

48 ments necessary or convenient to carry out any powers and
functions

49 expressly given in this title;

50 5. to commence any action to protect or enforce any right
conferred

51 upon it by any law, contract or other agreement;

52 6. to borrow money and issue bonds, notes or other obligations,
or to

53 refund the same, and to provide for the rights of the holders
of its

54 bonds, notes or other obligations;

55 7. as security for the payment of the principal of and interest
on any

56 bonds, notes or other obligations issued by it pursuant to this
title

S. 5905

7

1 and any agreements made in connection therewith and for its

obligations

2 under bond facilities, to pledge all or any part of its
revenues or

3 assets;

4 8. to procure insurance, letters of credit or other credit
enhancement

5 with respect to its bonds, notes or other obligations, or
facilities for

6 the payment of tenders of such bonds, notes or other
obligations or

7 facilities for the payment upon maturity of short-term notes
not

8 renewed;

9 9. to enter into interest rate exchange or similar arrangements
with

10 any person under such terms and conditions as the authority may
deter-

11 mine, not inconsistent with the general laws of this state and
other

12 provisions of this title, including, without limitation,
provisions as

13 to default or early termination and indemnification by the
authority or

14 any other party thereto for loss of benefits as a result thereof;

15 provided, however, that such exchanges or similar arrangements
shall be

16 limited to twenty-five percent of the amount authorized in
subdivision

17 one of section thirty-nine hundred sixty-two of this title to
pay the

18 financeable costs described in paragraph (a), (b), (d) or (e) of
subdi-

19 vision thirteen of section thirty-nine hundred fifty-one of this title;

20 10. to procure insurance, letters of credit or other credit
enhance-

21 ment with respect to arrangements described in subdivision nine of
this

22 section;

23 11. to accept gifts, grants, loans or contributions of funds or
finan-

24 cial or other aid in any form from the county, state or federal
govern-

25 ment or any agency or instrumentality thereof, or from any other
source

26 and to expend the proceeds for any of its corporate purposes in
accord-

27 ance with the provisions of this title;

28 12. subject to the provisions of any contract with
bondholders in

29 respect of escrow accounts to secure bonds that have been
refunded or

30 debt service funds in which revenues are deposited to secure

bonds,
31 notes or other indebtedness issued under this act, to invest any
funds
32 held in reserves or sinking funds, or any funds not required for
immedi-
33 ate use or disbursement, at the discretion of the authority, in (a)
34 obligations of the state or the United States government, (b)
obli-
35 gations the principal and interest of which are guaranteed by the
state
36 or the United States government, © certificates of deposit,
whether
37 negotiable or non-negotiable, and banker's acceptances of any of
the
38 fifty largest banks in the United States which bank, at the
time of
39 investment, has an outstanding unsecured, uninsured and
unguaranteed
40 debt issue ranked by two nationally recognized independent rating
agen-
41 cies at a rating category that is no lower than the then current
rating
42 of the authority's bonds, notes or other obligations, (d)
commercial
43 paper of any bank or corporation created under the laws of either
the
44 United States or any state of the United States which commercial
paper,
45 at the time of the investment, has received the highest rating of
two
46 nationally recognized independent rating agencies, (e) bonds,
deben-
47 tures, or other evidences of indebtedness, issued or guaranteed at
the
48 time of the investment by the federal national mortgage
association,
49 federal home loan mortgage corporation, student loan marketing
associ-
50 ation, federal farm credit system, or any other United States
government
51 sponsored agency, provided that at the time of the investment such
agen-
52 cy receives, or its obligations receive, any of the three highest
rating
53 categories of two nationally recognized independent rating agencies, (f)
54 any bonds or other obligations of any state or the United
States of
55 America or of any political subdivision thereof or any agency,
instru-
56 mentality or local governmental unit of any such state or
political

1 subdivision which bonds or other obligations, at the time of the
invest-
2 ment have received any of the three highest ratings of two
nationally
3 recognized independent rating agencies, (g) any repurchase
agreement
4 with any bank or trust company organized under the laws of any
state of
5 the United States of America or any national banking
association or
6 government bond dealer reporting to, trading with, and recognized
as a
7 primary dealer by the Federal Reserve Bank of New York, which
agreement
8 is secured by any one or more of the securities described in
paragraph
9 (a), (b) or (e) of this subdivision, which securities shall at all
times
10 have a market value of not less than the full amount of the
repurchase
11 agreement and be delivered to another bank or trust company
organized
12 under the laws of the state or any national banking association
domi-
13 ciled in the state, as custodian, and (h) reverse repurchase
agreements
14 with any bank or trust company organized under the laws of any
state of
15 the United States of America or any national banking
association or
16 government bond dealer reporting to, trading with, and recognized
as a
17 primary dealer by the Federal Reserve Bank of New York, which
agreement
18 is secured by any one or more of the securities described in
paragraph
19 (a), (b) or (e) of this subdivision which securities shall at all
times
20 have a market value of not less than the full amount of the
repurchase
21 agreement and be delivered to another bank or trust company
organized
22 under the laws of the state or any national banking association
domi-
23 ciled in the state, as custodian.
24 13. to appoint such officers and employees as it may require
for the
25 performance of its duties and to fix and determine their
qualifications,
26 duties, and compensation, and to retain or employ counsel, auditors
and

27 private financial consultants and other services on a contract
basis or
28 otherwise for rendering professional, business or technical
services and
29 advice; and, in taking such actions, the authority shall consider
the
30 financial impact on the county.
31 14. to do any and all things necessary or convenient to carry
out its
32 purposes and exercise the powers expressly given and granted in
this
33 title; provided, however, such authority shall under no
circumstances
34 acquire, hold or transfer title to, lease, own beneficially or
other-
35 wise, manage, operate or otherwise exercise control over any real
prop-
36 erty, any improvement to real property or any interest therein
other
37 than a lease or sublease of office space deemed necessary or
desirable
38 by the authority.
39 § 3955. Assistance to the authority; employees of the
authority. 1.
40 With the consent of any public corporation, the authority
may use
41 agents, employees and facilities thereof, paying to such public
corpo-
42 ration its agreed proportion of the compensation or costs.
43 2. Officers and employees of state or county agencies may be
trans-
44 ferred to the authority without examination and without loss of
any
45 civil service or retirement status or rights. Any officer or
employee of
46 the authority who heretofore acquired or shall hereafter acquire
such
47 position status by transfer and who at the time of such transfer
was a
48 member of the New York state and local employees' retirement
system
49 shall continue to be a member of such system as long as he or
she
50 continues in such service, and shall continue to have all the
rights,
51 privileges and obligations of membership in such system.
52 § 3956. County fiscal year two thousand five budget modification
and
53 four-year financial plan. 1. Not later than October first, two
thousand
54 five, the county executive, upon approval by the legislature,
shall

55 submit to the authority a budget modification and financial
plan
56 consistent with the financial plan requirements contained in
section

S. 5905

9

1 thirty-eight hundred fifty-seven of this article which may
reflect a
2 declaration of need as provided for in section thirty-nine
hundred
3 sixty-one of this title; provided, however, in county fiscal
year two
4 thousand five such declaration of need shall not exceed one
hundred
5 twenty-five million dollars in ECFSA assistance as defined in
paragraph
6 (a) of subdivision twelve of section thirty-nine hundred
fifty-one of
7 this title. The plan shall cover the county's two thousand five
fiscal
8 year and the three subsequent fiscal years.
9 2. Not later than fifteen days after such submission, the
authority
10 shall approve or disapprove the financial plan.
11 3. In the event the authority shall disapprove such financial
plan
12 based on disapproval of certain actions or assumptions, the
authority
13 shall promptly thereafter notify the county executive and
legislature of
14 its reasons. Within fifteen days from the receipt of such
notification
15 the county executive, upon the approval of the legislature, shall
modify
16 the financial plan. If the county fails to make such
modifications, the
17 authority shall adopt a resolution so finding.
18 § 3957. County financial plans. 1. Commencing with the county's
two
19 thousand six fiscal year, the county executive shall prepare and
submit
20 to the authority a four-year financial plan, and the county
executive's
21 proposed county budget, not later than the date required for
submission
22 of such budget to the legislature pursuant to the county charter.

Such

23 financial plan shall, in addition to the requirements for
financial
24 plans set forth in subdivisions two and three of this section,

contain
 25 actions sufficient to ensure with respect to the major operating
 funds
 26 for each fiscal year of the plan that annual aggregate
 operating
 27 expenses for such fiscal year shall not exceed annual aggregate
 operat-
 28 ing revenues for such fiscal year. For purposes of determining
 operating
 29 revenues in the fiscal years two thousand five through two
 thousand
 30 nine, such plan may assume receipt by the county of ECFSA
 assistance in

31 the following collective amounts for each respective fiscal year:

32	Amount	Fiscal Year
33	2005 amount	2005
34	2006 amount	2006
35	2007 amount	2007
36	2008 amount	2008
37	2009 amount	2009

38 As used in this subdivision:

39 “2005 amount” means that amount expected to be provided by the
 authority
 40 to ensure balanced major operating fund operations upon its
 determi-
 41 nation that the county has taken recurring actions to close at a
 minimum
 42 between ten per centum and fifteen per centum of the projected gap.

43 “2006 amount” means that amount expected to be provided by the
 authority
 44 to ensure balanced major operating fund operations upon its
 determi-
 45 nation that the county has taken recurring actions to close at a
 minimum
 46 between thirty-five per centum and forty per centum of the
 projected
 47 gap.

48 “2007 amount” means that amount expected to be provided by the
 authority
 49 to ensure balanced major operating fund operations upon its
 determi-
 50 nation that the county has taken recurring actions to close at a
 minimum
 51 between forty-five per centum and fifty per centum of the projected gap.

52 “2008 amount” means that amount expected to be provided by the
 authority
 53 to ensure balanced major operating fund operations upon its
 determi-
 54 nation that the county has taken recurring actions to close at a
 minimum
 55 between sixty per centum and sixty-five per centum of the projected gap.

1 “2009 amount” means that amount expected to be provided by the
authority
2 to ensure balanced major operating fund operations upon its
determi-
3 nation that the county has taken recurring actions to close at a
minimum
4 between eighty per centum and eighty-five per centum of the
projected
5 gap.
6 2. Pursuant to the procedures contained in this subdivision, each
year
7 during an advisory period or during a control period the county
shall
8 develop, and may from time to time modify, taking into account
recommen-
9 dations of the authority, a four-year financial plan covering the
county
10 and the covered organizations. Each financial plan and financial
plan
11 modification shall conform to the requirements of paragraph (a) of
this
12 subdivision and shall provide that the major operating funds of
the
13 county will be balanced in accordance with generally accepted
accounting
14 principles. The financial plan shall be developed and approved,
and may
15 from time to time be modified, in accordance with the following
proce-
16 dures:
17 (a) The county executive shall submit to the authority a
certificate
18 stating that the budget submitted to the authority is consistent
with
19 the financial plan submitted therewith and that operation
within the
20 budget is feasible.
21 (b) Not more than twenty days after submission of a financial
plan or
22 more than fifteen days after submission of a financial plan
modifica-
23 tion, the authority shall determine whether the financial plan or
finan-
24 cial plan modification is complete and complies with the
provisions of
25 this section and the other requirements of this title, and shall
submit
26 its recommendations with respect to the financial plan or financial
plan
27 modification in accordance with the provisions of this subdivision.
28 © Upon the approval by the county of a budget in accordance

with the
29 provisions of the county charter, the county executive shall submit
such
30 approved budget and financial plan to the authority
accompanied by
31 expenditure, revenue and cash flow projections on a quarterly
basis and
32 certify to the authority that such budget is consistent with the
finan-
33 cial plan to be submitted to the authority.
34 (d) If the authority determines that the financial plan or
financial
35 plan modification provided pursuant to paragraph © or (f) of
this
36 subdivision is complete and complies with the standards set
forth in
37 this subdivision, the authority shall make a certification to the
county
38 setting forth revenue estimates agreed to by the authority in
accordance
39 with such determination.
40 (e) The authority shall, in the event it disagrees with
elements of
41 the financial plan provided pursuant to paragraph © or (f) of
this
42 subdivision provide notice thereof to the county, with copies to
the
43 director of the budget, the state comptroller, the chair of the
state
44 assembly ways and means committee and the chair of the state
senate
45 finance committee, if, in the judgment of the authority, such plan: (i)
46 is incomplete; (ii) fails to contain projections of revenues and
expend-
47 itures that are based on reasonable and appropriate assumptions
and
48 methods of estimations; (iii) fails to provide that operations
of the
49 county and the covered organizations will be conducted within the
cash
50 resources available; or (iv) fails to comply with the provisions of
this
51 title or other requirements of law.
52 (f) After the initial adoption of an approved financial
plan, the
53 revenue estimates certified by the authority and the financial
plan
54 shall be regularly reexamined by the authority in consultation
with the
55 county and the covered organizations and the county executive
shall
56 provide a modified financial plan in such detail and within such

time

S. 5905

11

1 periods as the authority may require. In the event of reductions in
such
2 revenue estimates, or in the event the county or a covered
organization
3 shall expend funds at a rate that would exceed the aggregate
expenditure
4 limitation for the county or covered organization prior to the
expira-
5 tion of the fiscal year, the county executive shall submit a
financial
6 plan modification to effect such adjustments in revenue
estimates and
7 reductions in total expenditures as may be necessary to conform to
such
8 revised revenue estimates or aggregate expenditure limitations.
9 (g) If, within a time period specified by the authority, the
county
10 fails to make such modifications after reductions in revenue
estimates,
11 or to provide a modified plan in detail and within such time
period
12 required by the authority, the authority shall adopt a
resolution so
13 finding.
14 (h) The county shall amend its budget or shall submit a financial
plan
15 modification for the approval of the authority such that the
county's
16 budget and the approved financial plan shall be consistent. In no
event
17 shall the county operate under a budget that is inconsistent
with an
18 approved financial plan.
19 3. The financial plan shall be in such form and shall contain
such
20 information for each year during which the financial plan is in
effect
21 as the authority may specify, and shall include the county and all
the
22 covered organizations, and shall, in such detail as the authority
from
23 time to time may prescribe, include (a) statements of all
estimated
24 revenues and of all expenditures and cash flow projections of the
county
25 and each covered organization, and (b) an accounting of the
expenditure
26 of efficiency incentive grants available to the county for each

year of
27 the plan.
28 4. The financial plan shall include any information which the
authori-
29 ty may request to satisfy itself that: (a) projected employment
levels,
30 collective bargaining agreements and other actions relating to
employee
31 costs, capital construction and such other matters as the
authority may
32 specify are consistent with the provisions made for such
obligations in
33 the financial plan; (b) the county and the covered
organizations are
34 taking whatever action is necessary with respect to programs
mandated by
35 state and federal law to ensure that expenditures for such programs
are
36 limited to and covered by the expenditures stated in the financial plan;
37 © adequate reserves are provided to maintain essential programs
in the
38 event revenues have been overestimated or expenditures
underestimated
39 for any period; and (d) the county has adequate cash resources to
meet
40 its obligations. In addition, except to the extent such
reporting
41 requirements may be modified pursuant to agreement between the
authority
42 and the county, for each fiscal year occurring during a control
period,
43 or while bonds, notes or other obligations issued pursuant to this
title
44 are outstanding, the county executive shall prepare a quarterly
report
45 of summarized budget data depicting overall trends, by major
category
46 within funds, of actual revenues and budget expenditures for the
entire
47 budget rather than individual line items, as well as updated
quarterly
48 cash flow projections of receipts and disbursements. Such reports
shall
49 compare revenue estimates and appropriations as set forth in such
budget
50 and in the quarterly revenue and expenditure projections submitted
ther-
51 ewith, with the actual revenues and expenditures made to date.

Such

52 reports shall also compare actual receipts and disbursements
with the

53 estimates contained in the cash flow projections, together with
vari-
54 ances and their explanation. All quarterly reports shall be
accompanied
55 by recommendations from the county executive to the legislature
setting
56 forth any remedial action necessary to resolve any unfavorable
budget

S. 5905

12

1 variance including the overestimation of revenues and the
underesti-
2 mation of appropriations. These reports shall be completed within
thirty
3 days after the end of each quarter and shall be submitted to the
legis-
4 lature, the authority, the director of the budget, the chair
of the
5 state senate finance committee, the chair of the state assembly
ways and
6 means committee and the state comptroller. For each fiscal year
occur-
7 ring during a control or advisory period or while bonds, notes or
other
8 obligations issued pursuant to this title are outstanding, the
county
9 executive shall submit a proposed budget or revision thereto
to the
10 authority concurrent with submission to the legislature, and
shall
11 submit the adopted budget to the authority immediately upon
its
12 adoption.

13 5. For each financial plan and financial plan modification
to be
14 prepared and submitted by the county executive to the authority
pursuant
15 to the provisions of this section, the covered organizations
shall
16 submit to the county such information with respect to their
projected
17 expenditures, revenues and cash flows for each of the years
covered by
18 such financial plan or modification as the county executive shall
deter-
19 mine.

20 § 3957-a. Efficiency incentive grants. Along with the county
financial
21 plan commencing with the county's two thousand six fiscal year,
the
22 county shall develop and submit to the authority a plan for

achieving

23 recurring savings through innovations and reengineering.

Subject to

24 appropriations therefor in the state fiscal years two thousand
six—two

25 thousand seven through two thousand ten—two thousand eleven,
the

26 authority shall provide grants to support such county cost saving
activ-

27 ities. State funding during such five year period shall not exceed
fifty

28 million dollars, or ten million dollars annually, for grants
provided

29 pursuant to this section and section thirty-eight hundred
fifty-seven-a

30 of this article. Provided further, copies of such county plan
shall be

31 submitted to the director of the budget, the chair of the state
senate

32 finance committee and the chair of the state assembly ways and
means

33 committee.

34 § 3958. Advisory period. 1. During any advisory period the
authority

35 shall: (a) obtain from the county, the covered organizations
and the

36 state comptroller, all information, financial statements and
projec-

37 tions, budgetary data and information, and management reports and
mate-

38 rials as the authority deems necessary or desirable to accomplish
the

39 purposes of this title; and inspect, copy and audit such
books and

40 records of the county and the covered organizations as the
authority

41 deems necessary or desirable to accomplish the purposes of this title;

42 (b) review the operation, management, efficiency and
productivity of

43 county operations and of any covered organization's operations as
the

44 authority may determine, and make reports and recommendations thereon;

45 examine the potential to enhance the revenue of the county or
any

46 covered organization; audit compliance with the financial plan in
such

47 areas as the authority may determine; recommend to the county and
the

48 covered organizations such measures relating to their
operations,

49 management, efficiency and productivity as the authority deems

appropri-
50 ate to reduce costs, enhance revenue and improve services so
as to
51 advance the purposes of this title;
52 © consult with the county in the preparation of the budget
of the
53 county, comment on the provisions of the budget, the financial plan
and
54 the financial plan modifications of the county as the authority
deems
55 necessary or appropriate;

S. 5905

13

1 (d) review and comment on the terms of any proposed borrowing,
includ-
2 ing the prudence of each proposed issuance of bonds or notes
to be
3 issued by the county or any covered organization; and
4 (e) assess the impact of any collective bargaining agreement
to be
5 entered into by the county and such contracts, that, in the
judgment of
6 the authority, may have a significant impact on the county's
long-term
7 fiscal condition.

8 2. During any advisory period, the county shall promptly provide
all
9 information requested by the authority, review the comments,
assess-
10 ments, reports and recommendations of the authority and publicly
respond
11 thereto, addressing such matters as have been raised by the authority.

12 § 3959. Control period. 1. The authority shall impose a control
period
13 at any time that any of the following events has occurred or that
there
14 is a substantial likelihood and imminence of such occurrence:

(a) the

15 county shall have failed to adopt a balanced budget within time
frames
16 prescribed in the county charter, financial plan or budget
modification

17 as required by sections thirty-nine hundred fifty-six and
thirty-nine

18 hundred fifty-seven of this title; (b) the county shall have
failed to

19 pay the principal of or interest on any of its bonds or notes when due;

20 © the county shall have incurred a major operating funds
deficit of

21 one percent or more in the aggregate results of operations of such

funds
22 of the county during its fiscal year assuming all revenues and
expendi-
23 tures are reported in accordance with generally accepted
accounting
24 principles, subject to the provisions of this title; (d) the
comp-
25 troller's certification at any time, at the request of the
authority or
26 on the comptroller's initiative, which certification shall be made
from
27 time to time as promptly as circumstances warrant and reported
to the
28 authority, that on the basis of facts existing at such time the
comp-
29 troller could not make the certification described in paragraph
(b) of
30 subdivision one of section thirty-nine hundred fifty-one of this title;
31 or (e) the county shall have violated any provision of this
title. The
32 authority shall terminate any such control period when it
determines
33 that none of the conditions which would permit the authority to
impose a
34 control period exist. After termination of a control period the
authori-
35 ty shall annually consider paragraphs (a) through (e) of this
subdivi-
36 sion and determine whether, in its judgment, any of the events
described
37 in such paragraphs have occurred and the authority shall publish
each
38 such determination. Any certification made by the comptroller
hereunder
39 shall be based on the comptroller's written determination which
shall
40 take into account a report and opinion of an independent expert in
the
41 marketing of municipal securities selected by the authority,
and the
42 opinion of such expert and any other information taken into
account
43 shall be made public when delivered to the authority.

Notwithstanding

44 any part of the foregoing to the contrary, in no event shall any
control
45 period continue beyond the later of (i) December thirty-first, two
thou-
46 sand thirty-nine, or (ii) the date when all bonds of the authority
are
47 refunded, discharged or otherwise defeased.

48 2. In carrying out the purposes of this title during any control
peri-
49 od, the authority:
50 (a) shall approve or disapprove the financial plan and the
financial
51 plan modifications of the county, as provided in section
thirty-nine
52 hundred fifty-seven of this title, and shall formulate and adopt
its own
53 modifications to the financial plan, as necessary; such
modifications
54 shall become effective upon their adoption by the authority;
55 (b) may set a maximum level of spending for any proposed budget
of any
56 covered organization;

S. 5905

14

1 © may impose a wage and/or hiring freeze: (i) During a control
peri-
2 od, upon a finding by the authority that a wage and/or hiring
freeze is
3 essential to the adoption or maintenance of a county budget or a
finan-
4 cial plan that is in compliance with this title, the authority
shall be
5 empowered to order that all increases in salary or wages of
employees of
6 the county and employees of covered organizations which will take
effect
7 after the date of the order pursuant to collective bargaining
agree-
8 ments, other analogous contracts or interest arbitration awards,
now in
9 existence or hereafter entered into, requiring such salary or
wage
10 increases as of any date thereafter are suspended. Such order may
also
11 provide that all increased payments for holiday and vacation
differen-
12 tials, shift differentials, salary adjustments according to plan
and
13 step-ups or increments for employees of the county and
employees of
14 covered organizations which will take effect after the date of the
order
15 pursuant to collective bargaining agreements, other analogous
contracts
16 or interest arbitration awards requiring such increased payments
as of
17 any date thereafter are, in the same manner, suspended. For the
purposes

18 of computing the pension base of retirement allowances, any
suspended
19 salary or wage increases and any other suspended payments shall
not be
20 considered as part of compensation or final compensation or of
annual
21 salary earned or earnable;
22 (ii) Notwithstanding the provisions of subparagraph (i) of this
para-
23 graph, this subdivision shall not be applicable to employees of
the
24 county or employees of a covered organization subject to a
collective
25 bargaining agreement or an employee of the county or a covered
organiza-
26 tion not subject to a collective bargaining agreement where the
collec-
27 tive bargaining representative or such unrepresented employee has
agreed
28 to a deferment of salary or wage increase, by an instrument in
writing
29 which has been certified by the authority as being an acceptable
and
30 appropriate contribution toward alleviating the fiscal crisis
of the
31 county. Any such agreement to a deferral of salary or wage increase
may
32 provide that for the purposes of computing the pension base of
retire-
33 ment allowances, any deferred salary or wage increase may be
considered
34 as part of compensation or final compensation or of annual salary
earned
35 or earnable;

36 (iii) Notwithstanding the provisions of subparagraphs (i) and
(ii) of
37 this paragraph, no retroactive pay adjustments of any kind shall
accrue
38 or be deemed to accrue during the period of wage freeze, and no
such
39 additional amounts shall be paid at the time a wage freeze is
lifted, or
40 at any time thereafter;
41 (d) shall periodically evaluate the suspension of salary or
wage
42 increases or suspensions of other increased payments or
benefits, and
43 may, if it finds that the fiscal crisis, in the sole judgment of
the
44 authority has abated, terminate such suspensions;
45 (e) shall review and approve or disapprove any collective

bargaining

46 agreement to be entered into by the county or any covered organization,

47 or purporting to bind, the county or any covered organization.

Prior to

48 entering into any collective bargaining agreement, the county or any

49 covered organization shall submit a copy of such collective bargaining

50 agreement to the authority, accompanied by an analysis of the projected

51 costs of such agreement and a certification that execution of the agree-

52 ment will be in accordance with the financial plan. Such submission

53 shall be in such form and include such additional information as the

54 authority may prescribe. The authority shall promptly review the terms

55 of such collective bargaining agreement and the supporting information

56 in order to determine compliance with the financial plan, and shall

S. 5905

15

1 disapprove any collective bargaining agreement which, in its judgment,

2 would be inconsistent with the financial plan. No collective bargaining

3 agreement binding, or purporting to bind, the county or any covered

4 organization after the effective date of this title shall be valid and

5 binding upon the county or any covered organization unless first

6 approved by resolution of the authority;

7 (f) shall act jointly with the county in selecting members of any

8 interest arbitration panel. Notwithstanding any other evidence presented

9 by the county, the covered organization or any recognized employee

10 organization, the arbitration panel must, prior to issuing any final

11 decision, provide the authority with the opportunity to present evidence

12 regarding the fiscal condition of the county;

13 (g) shall take any action necessary in order to implement the finan-

14 cial plan should the county or any covered organization have

failed to
15 comply with any material action necessary to fulfill the plan,
provided,
16 however, the authority shall provide seven days notice of its
determi-
17 nation that the county or any covered organization has not
complied
18 prior to taking any such action;
19 (h) may review and approve or disapprove contracts or other
obli-
20 gations binding or purporting to bind the county or any covered
organ-
21 ization;
22 (i) shall, with respect to any proposed borrowing by or on
behalf of
23 the county or any covered organization on or after July first, two
thou-
24 sand five, review the terms of and comment, within thirty days
after
25 notification by the county or covered organization of a proposed
borrow-
26 ing, on the prudence of each proposed issuance of bonds or notes
to be
27 issued by the county or covered organization and no such borrowing
shall
28 be made unless first reviewed, commented upon and approved
by the
29 authority. The authority shall comment within thirty days after
notifi-
30 cation by the county or covered organization of a proposed
borrowing to
31 the county executive, the comptroller, the legislature, the
director of
32 the budget, the chair of the state senate finance committee, the
chair
33 of the state assembly ways and means committee and the state
comptroller
34 and indicate approval or disapproval of the proposed borrowing.

Notwith-

35 standing the foregoing, neither the county nor any covered
organization
36 shall be prohibited from issuing bonds or notes to pay outstanding
bonds
37 or notes; and, provided further, revenue anticipation notes
issued in
38 July two thousand five, shall be excluded from this requirement;
39 (j) may review the operation, management, efficiency and
productivity
40 of the county and any covered organizations as the authority may
deter-
41 mine, and make reports thereon; examine the potential to enhance

the
42 revenue of the county or any covered organization; audit compliance
with
43 the financial plan in such areas as the authority may determine;
recom-
44 mend to the county and the covered organizations such measures
relating
45 to their operations, management, efficiency and productivity
as the
46 authority deems appropriate to reduce costs, enhance revenue,
and
47 improve services so as to advance the purposes of this title;
48 (k) may review and approve or disapprove the terms of any
proposed
49 settlement of claims against the county or any covered
organization in
50 excess of fifty thousand dollars;
51 (l) may obtain from the county, the covered organizations, the
comp-
52 troller, and the state comptroller, as appropriate, all
information
53 required pursuant to this section, and such other financial
statements
54 and projections, budgetary data and information, and management
reports
55 and materials as the authority deems necessary or desirable to
accom-
56 plish the purposes of this title; and inspect, copy and audit such
books

S. 5905

16

1 and records of the county and the covered organizations as the
authority
2 deems necessary or desirable to accomplish the purposes of this title;
3 (m) may perform such audits and reviews of the county and any
agency
4 thereof and any covered organizations as it deems necessary; and
5 (n) may issue, from time to time and to the extent it deems
necessary
6 or desirable in order to accomplish the purposes of this title,
to the
7 appropriate official of the county and each covered organization,
such
8 orders necessary to accomplish the purposes of this title,
including,
9 but not limited to, timely and satisfactory implementation
of an
10 approved financial plan. Any order so issued shall be binding
upon the
11 official to whom it was issued and failure to comply with such
order

12 shall subject the official to the penalties described in
subdivision

13 three of this section.

14 3. (a) During any control period: (i) no officer or employee of
the

15 county or of any of the covered organizations shall make or
authorize an

16 obligation or other liability in excess of the amount available
therefor

17 under the financial plan as then in effect; (ii) no officer or
employee

18 of the county or of any of the covered organizations shall involve
the

19 county or any of the covered organizations in any contract or
other

20 obligation or liability for the payment of money for any
purpose

21 required to be approved by the authority unless such contract has
been

22 so approved and unless such contract or obligation or liability
is in

23 compliance with the approved financial plan as then in effect.

24 (b) No officer or employee of the county or any of the covered
organ-

25 izations shall take any action in violation of any valid order of
the

26 authority or shall fail or refuse to take any action required
by any

27 such order or shall prepare, present or certify any information
(includ-

28 ing any projections or estimates) or report to the authority or
any of

29 its agents that is false or misleading, or, upon learning that any
such

30 information is false or misleading, shall fail promptly to advise
the

31 authority or its agents thereof.

32 © In addition to any penalty or liability under any other
law, any

33 officer or employee of the county or any of the covered
organizations

34 who shall violate paragraph (a) or (b) of this subdivision
shall be

35 subject to appropriate administrative discipline, including,
when

36 circumstances warrant, suspension from duty without pay or removal
from

37 office by order of either the governor or the county executive; and
any

38 officer or employees of the county or any of the covered
organizations

39 who shall knowingly and willfully violate paragraph (a) or (b) of

this

40 subdivision shall, upon conviction, be guilty of a misdemeanor.
41 (d) In the case of a violation of paragraph (a) or (b) of this
subdi-
42 vision by an officer or employee of the county or of a covered
organiza-
43 tion, the county executive or the chief executive officer of
such
44 covered organization shall immediately report to the
authority all
45 pertinent facts together with a statement of the action taken thereon.
46 § 3960. Additional provisions. 1. Notwithstanding any provision
to the
47 contrary in title six-A of article two of the local finance law,
neither
48 the county nor any covered organization shall file any petition
author-
49 ized by such title six-A without the approval of the authority
and the
50 state comptroller. No such petition shall be filed as long as any
bonds,
51 notes or other obligations issued by the authority remain outstanding.
52 Failure of the authority or the state comptroller to notify the
county
53 or a covered organization within thirty days (or such additional
time,
54 not exceeding thirty days, as the authority or state comptroller
shall
55 have notified the county or covered organization that it
requires to

S. 5905

17

1 complete its review) after submission to it of a petition
shall be
2 deemed to constitute authority or state comptroller approval thereof.
3 2. Nothing contained in this title shall limit the right of the
county
4 or any covered organization to comply with the provisions of any
exist-
5 ing contract within or for the benefit of the holders of any
bonds,
6 notes or other obligations of the county or such covered organization.
7 3. Nothing contained in this title shall be construed to
limit the
8 power of the county or a covered organization to determine, from
time to
9 time, within available funds for the county or for such covered
organ-
10 ization, the purposes for which expenditures are to be made by the
coun-
11 ty or such covered organization and the amounts of such

expenditures,

12 consistent with the aggregate expenditures then permitted under
the

13 financial plan for the county or such covered organization.

14 4. The authority's fiscal year shall be January first through

December

15 thirty-first.

16 5. The authority shall adopt guidelines for procurement
contracts in

17 accordance with section twenty-eight hundred seventy-nine of this
chap-

18 ter.

19 6. Nothing contained in this title shall alter, limit,
modify or

20 impair the right of any school district or any city, town, or
village

21 within the county to receive from the county net collections, as
author-

22 ized by section twelve hundred sixty-two of the tax law, from the
coun-

23 ty's sales and compensating use taxes imposed pursuant to the
authority

24 of subpart B of part one of article twenty-nine of the tax law.

25 § 3961. Declaration of need for financing assistance to the
county.

26 1. The county shall determine and declare whether it requests
the

27 authority to undertake a financing of costs for the county
or any

28 covered organization. Any such request shall be made by and through
the

29 county executive after approval by the legislature. Any such
financing

30 shall be consistent with the adopted budget and financial plan of
the

31 county required under sections thirty-nine hundred fifty-six and
thir-

32 ty-nine hundred fifty-seven of this title, as applicable.

33 2. Upon declaration by the county of such need, the county
executive

34 shall request that the authority provide financing in accordance
with

35 the provisions of this title.

36 3. Upon approval by the authority, in its discretion in
accordance

37 with the provisions of this title, of such financing
request, the

38 authority may enter into agreements with the county, for itself
or on

39 behalf of any covered organization, as applicable, and the
county,

40 acting by the county executive, and approved by the legislature,
may
41 enter into agreements with the authority in accordance with
the
42 provisions of this title as to the financing of costs by the
authority,
43 the application of revenues to secure the authority's bonds,
notes or
44 other obligations, and further assurances in respect of the
authority's
45 receipt of such revenues and the fiscal affairs of the county,
including
46 but not limited to the manner of preparation of budget
reports and
47 financial plans as provided for in sections thirty-nine hundred
fifty-
48 six and thirty-nine hundred fifty-seven of this title, as applicable.
49 The authority's revenues shall not be deemed funds of the county.

Any

50 such agreements with the county may be pledged by the
authority to
51 secure its bonds, notes or other obligations and may not be
modified
52 thereafter except as provided by the terms of the pledge or
subsequent
53 agreements with the holders of such obligations.
54 4. Such agreements with the county shall: (a) describe the
particular
55 financeable costs to be financed in whole or in part by the authority;
56 (b) describe the plan for the financing of the costs; (c) set forth
the

S. 5905

18

1 method by which and by whom and the terms and conditions upon
which
2 money provided by the authority shall be disbursed to the county,
for
3 itself or on behalf of any covered organization, as applicable; (d)
4 where appropriate, provide for the payment of such costs by the
county
5 under such contracts as shall be awarded by the county or for the
county
6 to make a capital contribution of such proceeds as county
funds to
7 another entity for the payment or reimbursement of such costs; and (e)
8 require every contract entered into by the county, or another
entity
9 receiving funds from the county, for costs to be financed in whole
or in

10 part by the authority to be subject to the provisions of the
county
11 charter and other applicable laws governing contracts of the
county or
12 such entity, as the case may be.
13 5. At least annually, commencing no more than one year after the
date
14 on which authority bonds, notes or other obligations are first
issued,
15 the county executive shall report to the authority, the
comptroller, the
16 legislature, the state comptroller, the chairs of the state
senate
17 finance committee and the state assembly ways and means committee,
and
18 the director of the budget on the costs financed by the
authority and
19 the amount of such financing over the past year, which report
shall
20 describe, by reference to the specific items in the county's
budget or
21 financial plan, its compliance therewith.
22 § 3962. Bonds, notes or other obligations of the authority. 1.

The

23 authority shall have the power and is hereby authorized from
time to
24 time to issue bonds, notes or other obligations in such
principal
25 amounts as it may determine to be necessary pursuant to section
thirty-
26 nine hundred sixty-one of this title to pay any financeable costs
and to
27 fund reserves to secure such bonds, notes or other obligations,
includ-
28 ing incidental expenses in connection therewith; provided,
however, the
29 aggregate principal amounts of such bonds, notes or other
obligations
30 outstanding at any one time shall not exceed seven hundred
million
31 dollars, and such bonds shall be exempt as provided in section
thirty-
32 nine hundred sixty-nine of this title. Bonds, notes or other
obligations
33 issued by the authority (a) to pay reasonable costs of
issuance, as
34 determined by the authority, (b) to establish debt service
reserve
35 funds, © to refund or advance refund any outstanding bonds or
notes of
36 the county or the authority, or (d) as cash flow borrowings

shall not
37 count against the above limit on outstanding bonds, notes or other
obli-
38 gations of the authority, nor shall any accretion of principal of
bonds
39 that would constitute interest under the Internal Revenue Code of
1986,
40 as amended, count against such limit; provided further, that the
aggre-
41 gate principal amount of cash flow borrowings outstanding at any
time
42 shall not exceed two hundred fifty million dollars.
43 2. The authority may issue bonds, notes or other obligations to
refund
44 bonds, notes or other obligations previously issued, but in no
event
45 shall the final maturity of any bonds, notes or other obligations
of the
46 authority be later than December thirty-first, two thousand thirty-nine.
47 No bond of the authority shall mature more than thirty years
from the
48 date of its issue, or after December thirty-first, two thousand
thirty-
49 nine, whichever date is earlier.
50 3. Bonds, notes or other obligations of the authority may be
issued,
51 amortized, redeemed and refunded without regard to the provisions
of the
52 local finance law.
53 4. The directors may delegate to the chairperson or other
director or
54 officer of the authority the power to set the financial terms of
bonds,
55 notes or other obligations.

S. 5905

19

1 5. The authority in its sole discretion shall determine that the
issu-
2 ance of its bonds, notes or other obligations is appropriate.
Bonds,
3 notes or other obligations shall be authorized by resolution
of the
4 authority. Bonds shall bear interest at such fixed or variable
rates and
5 shall be in such denominations, be in such form, either coupon or
regis-
6 tered, be sold at such public or private sale, be executed in
such
7 manner, be denominated in United States currency, be payable in
such
8 medium of payment, at such place and be subject to such terms of

redemp-

9 tion as the authority may provide in such resolution. No bonds,
notes or

10 other obligations of the authority may be sold at private sale
unless

11 such sale and the terms thereof have been approved in writing by:
(a)

12 the state comptroller where such sale is not to the state comptroller;

13 or (b) the director of the budget, where such sale is to the state
comp-

14 troller.

15 6. Any resolution or resolutions authorizing bonds, notes or
other

16 obligations or any issue of bonds, notes or other
obligations may

17 contain provisions which may be a part of the contract with the
holders

18 of the bonds, notes or other obligations thereby authorized as

to: (a)

19 pledging all or part of the authority's revenues, together with
any

20 other moneys, securities or contracts, to secure the payment
of the

21 bonds, notes or other obligations, subject to such agreements with
bond-

22 holders as may then exist; (b) the setting aside of reserves and
the

23 creation of sinking funds and the regulation and disposition thereof;

24 © limitations on the purposes to which the proceeds from the
sale of

25 bonds, notes or other obligations may be applied; (d) limitations
on the

26 issuance of additional bonds, notes or other obligations, the terms
upon

27 which additional bonds, notes or other obligations may be
issued and

28 secured and the refunding of bonds, notes or other obligations; (e)
the

29 procedure, if any, by which the terms of any contract with
bondholders

30 may be amended or abrogated, including the proportion of
bondholders

31 which must consent thereto and the manner in which such consent
may be

32 given; (f) vesting in a trustee or trustees such properties,
rights,

33 powers and duties in trust as the authority may determine,
which may

34 include any or all of the rights, powers and duties of the
trustee

35 appointed by the bondholders pursuant to section thirty-nine
hundred

36 sixty-three of this title and limiting or abrogating the rights of
the
37 bondholders to appoint a trustee under such section or
limiting the
38 rights, duties and powers of such trustee; and (g) defining the
acts or
39 omissions of the authority to act which may constitute a default
in the
40 obligations and duties of the authority to the bondholders and
providing
41 for the rights and remedies of the bondholders in the event of
such
42 default, including as a matter of right the appointment of a receiver;
43 provided, however, that such acts or omissions of the authority to
act
44 which may constitute a default and such rights and remedies shall
not be
45 inconsistent with the general laws of the state and other
provisions of
46 this title.
47 7. In addition to the powers conferred upon the authority in
this
48 section to secure its bonds, notes or other obligations, the
authority
49 shall have power in connection with the issuance of bonds,
notes or
50 other obligations to enter into such agreements for the benefit
of the
51 bondholders as the authority may deem necessary, convenient or
desirable
52 concerning the use or disposition of its revenues or other
moneys,
53 including the entrusting, pledging or creation of any other
security
54 interest in any such revenues, moneys and the doing of any act,
includ-
55 ing refraining from doing any act, which the authority would
have the
56 right to do in the absence of such agreements. The authority shall
have

S. 5905

20

1 power to enter into amendments of any such agreements within the
powers
2 granted to the authority by this title and to perform such agreements.
3 The provisions of any such agreements may be made a part of the
contract
4 with the holders of bonds, notes or other obligations of the authority.
5 8. Notwithstanding any provision of the uniform commercial code
to the
6 contrary, any pledge of or other security interest in revenues,

moneys,

7 accounts, contract rights, general intangibles or other personal
proper-

8 ty made or created by the authority shall be valid, binding
and

9 perfected from the time when such pledge is made or other
security

10 interest attaches without any physical delivery of the
collateral or

11 further act, and the lien of any such pledge or other security
interest

12 shall be valid, binding and perfected against all parties having
claims

13 of any kind in tort, contract or otherwise against the authority
irre-

14 spective of whether such parties have notice thereof. No
instrument by

15 which such a pledge or security interest is created nor any
financing

16 statement need be recorded or filed to be valid and binding.

17 9. Whether or not the bonds, notes or other obligations of the
author-

18 ity are of such form and character as to be negotiable instruments
under

19 the terms of the uniform commercial code, such bonds, notes or
other

20 obligations are hereby made negotiable instruments within the
meaning of

21 and for all the purposes of the uniform commercial code, subject
only to

22 the provisions of the bonds for registration.

23 10. Neither the directors of the authority nor any person
executing

24 bonds, notes or other obligations shall be liable personally
thereon or

25 be subject to any personal liability or accountability solely by
reason

26 of the issuance thereof. The bonds, notes or other obligations of
the

27 authority shall not be a debt of either the state or the
county, and

28 neither the state nor the county shall be liable thereon, nor shall
they

29 be payable out of any funds other than those of the authority; and
such

30 bonds, notes or other obligations shall contain on the face
thereof a

31 statement to such effect.

32 11. The authority, subject to such agreements with bondholders as
then

33 may exist, shall have power to purchase bonds, notes or other
obli-

34 gations of the authority out of any moneys available therefor,
which
35 shall thereupon be canceled.
36 § 3963. Remedies of bondholders. Subject to any resolution or
resol-
37 utions adopted pursuant to paragraph (f) of subdivision six of
section
38 thirty-nine hundred sixty-two of this title: 1. In the event that
the
39 authority shall default in the payment of principal of or
interest on
40 any issue of bonds, notes or other obligations after the same
shall
41 become due, whether at maturity or upon call for redemption, and
such
42 default shall continue for a period of thirty days, or shall
default in
43 any agreement made with the holders of any issue of bonds,
notes, or
44 other obligations, the holders of at least twenty-five per
centum in
45 aggregate principal amount of the bonds, notes or other
obligations of
46 such issue then outstanding, by instrument or instruments filed in
the
47 office of the clerk of the county and proved or acknowledged in the
same
48 manner as a deed to be recorded, may appoint a trustee to
represent the
49 holders of such bonds, notes or other obligations for the
purpose
50 provided in this section.
51 2. Such trustee may, and upon written request of the holders
of at
52 least twenty-five per centum in principal amount of such bonds,
notes or
53 other obligations outstanding shall, in his or her or its own name:
(a)
54 by action or proceeding in accordance with the civil practice
law and
55 rules, enforce all rights of the holders of such bonds, notes or
other
56 obligations and require the authority to carry out any other
agreements

S. 5905

21

1 with the holders of such bonds, notes or other obligations
and to
2 perform its duties under this title; (b) bring an action or
proceeding
3 upon such bonds, notes or other obligations; © by action or

proceed-

4 ing, require the authority to account as if it were the trustee
of an

5 express trust for the holder of such bonds, notes or other obligations;

6 and (d) by action or proceeding, enjoin any acts or things which
may be

7 unlawful or in violation of the rights of the holders of such
bonds,

8 notes or other obligations.

9 3. Such trustee shall, in addition to the provisions of
subdivisions

10 one and two of this section, have and possess all of the powers
neces-

11 sary or appropriate for the exercise of any functions
specifically set

12 forth in this section or incident to the general representation of
hold-

13 ers of bonds, notes or other obligations in the enforcement
and

14 protection of their rights.

15 4. The supreme court of the county shall have jurisdiction
of any

16 action or proceeding by the trustee on behalf of such holders of
bonds,

17 notes or other obligations.

18 § 3964. Intercept of county tax revenues and state aid
revenues. 1.

19 Commencing on the effective date of this title, and until December
thir-

20 ty-first, two thousand thirty-nine, the state comptroller shall
pay

21 county tax revenues at least monthly to the authority in accordance
with

22 section twelve hundred sixty-one of the tax law. During such
period,

23 the county shall impose sales and compensating use taxes pursuant
to the

24 authority of subdivision (a) of section twelve hundred ten of the
tax

25 law at a rate of no less than three percent.

26 2. Commencing on the effective date of this title, and until

December

27 thirty-first, two thousand thirty-nine, the state comptroller shall
pay

28 state aid revenues to the authority.

29 3. The county shall have no right, title, or interest in
county tax

30 revenues or state aid revenues required to be paid to the
authority

31 pursuant to this section.

32 § 3965. Resources of the authority. 1. Subject to the

provisions of

33 this title, the directors of the authority shall receive,
accept,

34 invest, administer, expend and disburse for its corporate
purposes all

35 moneys of the authority from whatever source derived including (a)
36 revenues and (b) proceeds of bonds, notes or other obligations.

37 2. Subject to the provisions of any contract with holders of
bonds,

38 notes or other obligations, revenues of the authority shall be
paid to

39 the authority and shall not be commingled with any other money.

40 3. The money in any of the authority's accounts shall be paid
out on

41 checks signed by the treasurer of the authority, or by other lawful
and

42 appropriate means such as wire or electronic transfer, on
requisitions

43 of the chairperson of the authority or of such other officer as
the

44 directors shall authorize to make such requisition, or pursuant
to a

45 bond resolution or trust indenture.

46 4. All deposits of authority money shall be secured by
obligations of

47 the United States or of the state or of the county at a market
value at

48 least equal at all times to the amount of the deposit, and all
banks and

49 trust companies are authorized to give such security for such deposits.

50 The authority shall have the power, notwithstanding the
provisions of

51 this section, to contract with the holders of any of its bonds,
notes or

52 other obligations as to the custody, collection, securing,
investment

53 and payment of any money of the authority or any money held in
trust or

54 otherwise for the payment of bonds, notes or other obligations or
in any

55 way to secure bonds, notes or other obligations, and to carry out
any

56 such contract notwithstanding that such contract may be
inconsistent

S. 5905

22

1 with the other provisions of this title. Money held in trust or
other-

2 wise for the payment of bonds, notes or other obligations or in
any way

3 to secure bonds, notes or other obligations, and deposits of such

money,
4 may be secured in the same manner as money of the authority,
and all
5 banks and trust companies are authorized to give such security for
such
6 deposits.
7 5. Revenues of the authority shall be applied in the following
order
8 of priority: first to pay debt service or for set asides to pay
debt
9 service on the authority's bonds, notes, or other obligations
and to
10 replenish any reserve funds securing such bonds, notes or other
obli-
11 gations of the authority in accordance with the provision of
indenture
12 or bond resolution of the authority; then to pay the authority's
operat-
13 ing expenses not otherwise provided for; and then, subject to
the
14 authority's agreements with the county for itself or on behalf
of any
15 covered organization to transfer as frequently as practicable
the
16 balance of revenues not required to meet contractual or other
obli-
17 gations of the authority to the county as provided in subdivision
seven
18 of this section.
19 6. (a) Any such payment of state aid revenues to the authority
shall
20 not obligate the state to make available, nor entitle the
county to
21 receive, any additional state aid.
22 (b) Nothing contained in this title shall be construed to
create a
23 debt of the state within the meaning of any constitutional or
statutory
24 provisions. Any provision with respect to state aid or state aid
reven-
25 ues shall be deemed executory only to the extent of moneys
available,
26 and no liability shall be incurred by the state beyond the moneys
avail-
27 able for that purpose, and any such payment by the comptroller of
state
28 aid revenues is subject to annual appropriation of state aid by
the
29 state legislature.
30 © Nothing contained in this title shall be deemed to
restrict the
31 right of the state to amend, repeal, modify, or otherwise alter

section
32 fifty-four of the state finance law or any provision relating to
state
33 aid to municipalities. The authority shall include within any
resol-
34 ution, contract, or agreement with holders of its bonds, notes or
other
35 obligations a provision which states that no default occurs as a
result
36 of the state's exercising its right to amend, repeal, modify, or
other-
37 wise alter section fifty-four of the state finance law or any
other
38 provision relating to state aid to municipalities.
39 7. On a monthly basis, the authority shall prepare and provide
to the
40 county a detailed accounting of all revenues received and payments
and
41 debt service set asides made, as attributable to the county.

Such

42 accounting shall reflect: (a) the amount of state aid revenues and
coun-
43 ty tax revenues received during such month; (b) the respective
portion
44 of debt service paid or set aside during such month by the
authority for
45 its bonds, notes or other obligations attributable to the county; ©
46 the respective portion of reserve fund replenishment made or set
aside
47 during such month by the authority in connection with its bonds,
notes
48 or other obligations attributable to the county; and (d) the
respective
49 portion of administrative expenses of the authority paid or set
aside
50 during such month by the authority attributable to the county. As
soon
51 as practicable after each monthly payment or set aside, the
authority
52 shall make respective payments of the remaining monthly
balance or
53 revenues to the county in accordance with such accounting. To the
extent
54 that such respective monthly payments of the remaining balance of
reven-
55 ues result in an overpayment or underpayment to the county, the
authori-
56 ty shall in the immediately subsequent month, after making debt
service

1 payments or debt service set asides, replenishing any reserve funds
and
2 paying the administrative expenses of the authority for such month,
make
3 an adjustment in favor of the county, as the case may be, before
deter-
4 mining the remaining amount of the balance of revenues for such
subse-
5 quent month and paying such remaining monthly balance of revenues
to the
6 county. Nothing in this title shall be deemed to restrict the
authority
7 of the state comptroller and the commissioner of taxation and
finance to
8 adjust for overpayments or underpayments pursuant to the tax law.
9 8. (a) This subdivision shall apply only to revenue
anticipation
10 notes, including renewals thereof, issued by the county during
its
11 fiscal year ending December thirty-first, two thousand five, in
antic-
12 ipation of the receipt of county tax revenues, and only to such
issues
13 of revenue anticipation notes as to which the certificate
described in
14 paragraph (b) of this subdivision is filed.
15 (b) Notwithstanding the provisions of subdivision five of this
section
16 with respect to the transfer of the balance of tax revenues to the
coun-
17 ty, prior to the delivery of each such issue of revenue
anticipation
18 notes, the comptroller of the county shall file with the
authority a
19 request that the authority establish a county of Erie revenue
antic-
20 ipation note withholding fund which shall constitute a special
bank
21 account for purposes of paragraph g of section 25.00 of the
local
22 finance law. Such request by the comptroller shall be accompanied
by a
23 certificate setting forth with respect to such issue (i) the
principal
24 amount, (ii) the date of issue, (iii) the maturity date, (iv) the
inter-
25 est rate or rates, (v) if interest shall be payable otherwise
than at
26 maturity, the date or dates for the payment thereof, (vi) the name
and
27 address of the paying agent, (vii) the name and address of each

purchas-
28 er, or, if a purchaser shall be a syndicate or similar account, the
name
29 and address of each managing underwriter of such syndicate or
similar
30 account, (viii) the amount payable on each principal payment date
and
31 interest payment date, and (ix) a schedule setting forth the
total
32 amount of county tax revenues anticipated to be received, and
the
33 expected date or dates of anticipated receipt of such county tax
reven-
34 ues. Such certificate shall be accompanied by a statement
executed by
35 the comptroller certifying that the amounts and times of
payments of
36 county tax revenues contained in such schedule have been
estimated by
37 the use of reasonable and appropriate data and methods of
estimation,
38 all in accordance with applicable law.
39 © All such revenue anticipation notes, in addition to a
pledge of
40 the faith and credit of the county for the payment thereof,
shall
41 contain a recital to the effect that they are entitled to the
benefits
42 of the provisions of this subdivision.
43 (d) Commencing on the date not less than five days prior to
and on
44 each day thereafter up to and including any principal and/or
interest
45 payment date referred to in the certificate filed by the
comptroller
46 with the authority pursuant to paragraph (b) of this subdivision,
the
47 authority shall pay to such paying agent from county tax revenues
trans-
48 ferred and credited by the authority to the county of Erie
revenue
49 anticipation note withholding fund as provided in paragraph (e) of
this
50 subdivision the amount required to pay in full the principal
and/or
51 interest due on such payment date as set forth in such certificate.
52 Moneys so paid shall pass immediately from the authority and
vest in
53 such paying agent in trust for the benefit of the holders of the
revenue
54 anticipation notes to which such certificate relates. No other
person

55 having any claim of any kind in tort, contract or otherwise
against the
56 county shall have any right to or claim against the moneys held by
such

S. 5905

24

1 paying agent, and such moneys shall not be subject to any order,
judg-
2 ment, lien, execution, attachment, setoff or counterclaim by any
such
3 other person. Such moneys shall be held by such paying agent in a
sepa-
4 rate trust account and shall be applied only to the payment of the
prin-
5 cipal and/or interest due on such revenue anticipation notes,
provided,
6 however, that the contract by and between the county and such
paying
7 agent may provide for (i) the investment by such paying agent of
such
8 moneys in direct obligations of, or in obligations guaranteed by,
the
9 United States of America, provided such obligations shall be
payable or
10 redeemable at the option of the holder within such time as the
proceeds
11 shall be needed to pay such principal and/or interest due on such
reven-
12 ue anticipation notes, and (ii) the use by such paying agent of
such
13 moneys for the purchase of direct obligations of, or obligations
guaran-
14 teed by, the United States of America under one or more
repurchase
15 agreements with any bank or trust company having its principal
office in
16 the state of New York, provided that any such repurchase agreement
shall
17 provide for the repurchase of such obligations within such time as
such
18 moneys are needed to pay the principal and/or interest due on
such
19 revenue anticipation notes at a repurchase price at least
sufficient to
20 make the amount so invested available for the payment of
principal
21 and/or interest due on such revenue anticipation notes, and
provided,
22 further, that, at the time of such purchase, the market value of
such
23 obligations shall be at least equal to one hundred two per centum

of the
24 amount so invested. No person having any claim of any kind in
tort,
25 contract or otherwise against the county shall have any right
to or
26 claim against any moneys in anticipation of which such notes have
been
27 issued, other than a claim for payment by the holders of such
notes, and
28 such moneys shall not be subject to any order, judgment,
lien,
29 execution, attachment, setoff or counterclaim by any such person.
30 Notwithstanding any provision of law to the contrary, no
instrument
31 relating to any transaction authorized or contemplated by this
paragraph
32 need be filed under the provisions of the uniform commercial code.
33 (e) Commencing on the day when the authority determines that the
prin-
34 cipal and interest due or to come due on such outstanding revenue
antic-
35 ipation notes issued against such county tax revenues in accordance
with
36 the provisions of this subdivision shall equal the amount of such
county
37 tax revenues as set forth on the schedule included in the
certificate
38 filed with the authority pursuant to paragraph (b) of this
subdivision
39 remaining to be paid to the county on or prior to any principal
and/or
40 interest payment date, the authority shall deduct and withhold from
the
41 amount of such county tax revenues otherwise payable to the
county an
42 amount sufficient to pay, when due, the principal of and interest
on all
43 such revenue anticipation notes issued and then outstanding in
antic-
44 ipation thereof. Amounts so deducted and withheld shall be
transferred
45 and credited by the authority to the account established for such
county
46 tax revenues in the county of Erie revenue anticipation note
withholding
47 fund established by the authority in accordance with the
comptroller's
48 request pursuant to paragraph (b) of this subdivision. The
payments
49 required to be made by the authority pursuant to paragraph (d) of
this
50 subdivision shall be made from amounts on deposit in the accounts

estab-
51 lished for such county tax revenues in the county of Erie revenue
antic-
52 ipation note withholding fund.
53 (f) Notwithstanding any other provision of this subdivision,
at the
54 expiration of one hundred eighty days after the maturity date of
any
55 issue of revenue anticipation notes issued in accordance
with the
56 provisions of this subdivision, the amounts held by the paying
agent

S. 5905

25

1 thereof for the payment of the principal of and interest on the
notes of
2 such issue which have not been presented for payment shall be paid
over
3 and remitted by such paying agent to the county and thereafter the
hold-
4 ers of such notes shall look only to the county for such payment.
5 (g) All other provisions of the local finance law not
inconsistent
6 with the provisions of this subdivision shall continue to apply to
the
7 authorization and issuance of revenue anticipation notes by the county.
8 § 3966. Agreement with the state. 1. The state does hereby
pledge to
9 and agree with the holders of any issue of bonds, notes or other
obli-
10 gations issued by the authority pursuant to this title and
secured by
11 such a pledge that the state will not limit, alter or impair the
rights
12 hereby vested in the authority to fulfill the terms of any
agreements
13 made with such holders pursuant to this title, or in any way impair
the
14 rights and remedies of such holders or the security for such
bonds,
15 notes or other obligations, until such bonds, notes or other
obli-
16 gations, together with interest thereon and all costs and
expenses in
17 connection with any action or proceeding by or on behalf of such
hold-
18 ers, are fully paid and discharged. The authority is
authorized to
19 include this pledge and agreement of the state in any agreement
with the
20 holders of such bonds, notes or other obligations. Nothing

contained in

21 this title shall be deemed to restrict any right of the state to
amend,

22 modify, repeal or otherwise alter: (a) section fifty-four of the
state

23 finance law or any other provision relating to state aid, or (b)
stat-

24 utes imposing or relating to taxes or fees, or appropriations
relating

25 thereto.

26 2. The authority shall not include within any resolution,
contract or

27 agreement with holders of the bonds, notes or other obligations
issued

28 under this title any provision which provides that a default occurs
as a

29 result of the state exercising its right to amend, modify, or
repeal or

30 otherwise alter: (a) section fifty-four of the state finance law or
any

31 other provision relating to state aid; or (b) statutes
imposing or

32 relating to taxes, fees, or appropriations relating thereto.

Nothing in

33 this title shall be deemed to obligate the state to make any
payments or

34 impose any taxes to satisfy the debt service obligations of the
authori-

35 ty.

36 § 3967. Agreement with the county. 1. The county shall
covenant and

37 agree with the holders of any issue of bonds, notes or other
obligations

38 issued by the authority pursuant to this title and secured by
such

39 covenant and agreement that the county will not limit, alter or
impair

40 the rights hereby vested in the authority to fulfill the terms of
any

41 agreements made with such holders pursuant to this title, or in
any way

42 impair the rights and remedies of such holders or the security for
such

43 bonds, notes or other obligations, until such bonds, notes or
other

44 obligations, together with the interest thereon and all costs
and

45 expenses in connection with any action or proceeding by or on
behalf of

46 such holders, are fully paid and discharged. The authority is
authorized

47 to include this covenant and agreement of the county in any agreement

48 with the holders of such bonds, notes or other obligations.

Nothing

49 contained in this title shall be deemed to restrict any right of the

50 county to amend, modify, repeal or otherwise alter any local laws, ordi-

51 nances or resolutions imposing or relating to taxes or fees, or appro-

52 priations relating to such taxes or fees, or setting aside or allocating

53 and applying, paying or using net collections pursuant to the authority

54 of subdivision (a), (c) or (d) of section twelve hundred sixty-two of

55 the tax law, so long as, after giving effect to such amendment, modifi-

56 cation or other alteration, the aggregate amount as then projected by

S. 5905

26

1 the authority of (i) sales and compensating use taxes to be imposed by

2 the county pursuant to the authority of subpart B of part one of article

3 twenty-nine of the tax law; and

4 (ii) all such net collections to be set aside or to be allocated and

5 applied, paid or used by the county pursuant to the authority of section

6 twelve hundred sixty-two of the tax law during each of the authority's

7 fiscal years following the effective date of such amendment, modifica-

8 tion or other alteration shall be not less than two hundred percent of

9 maximum annual debt service on authority bonds, notes or other obli-

10 gations then outstanding. Notwithstanding anything to the contrary in

11 this section, the county further agrees that it shall impose taxes

12 pursuant to the authority of subdivision (a) of section twelve hundred

13 ten of the tax law at the rate of no less than three percent.

14 2. The authority shall not include within any resolution, contract or

15 agreement with holders of the bonds, notes or other obligations
issued
16 under this title any provision which provides that a default occurs
as a
17 result of the county exercising its right to amend, modify,
repeal or
18 otherwise alter such taxes, fees or appropriations or such
net
19 collections. Nothing in this title shall be deemed to obligate the
coun-
20 ty to make any payments or impose any taxes or set aside or
allocate and
21 apply, pay or use net collections pursuant to the authority of
section
22 twelve hundred sixty-two of the tax law; except that the county
shall
23 impose taxes pursuant to the authority of subdivision (a) of
section
24 twelve hundred ten of the tax law at the rate of no less than
three
25 percent.
26 § 3968. Bonds, notes or other obligations legal for
investment and
27 deposit. Bonds, notes or other obligations of the authority are
hereby
28 made securities in which all public officers and bodies of the
state and
29 all public corporations, municipalities and municipal
subdivisions, all
30 insurance companies and associations and other persons carrying
on an
31 insurance business, all banks, bankers, trust companies, savings
banks
32 and savings associations including savings and loan associations,
build-
33 ing and loan associations, investment companies and other persons
carry-
34 ing on a banking business, all administrators, conservators,
guardians,
35 executors, trustees and other fiduciaries, and all other persons
whatso-
36 ever who are now or may hereafter be authorized to invest in
bonds,
37 notes or other obligations of the state, may properly and legally
invest
38 funds, including capital, in their control or belonging to them.

Such

39 bonds, notes or other obligations are also hereby made securities
which
40 may be deposited with and may be received by all public officers
and

41 bodies of the state and all municipalities and public
corporations for
42 any purpose for which the deposit of bonds, notes or other
obligations
43 of the state is now or may hereafter be authorized.
44 § 3969. Tax exemption. 1. It is hereby determined that the
creation of
45 the authority and the carrying out of its corporate purposes are
in all
46 respects for the benefit of the people of the state of New York and
are
47 public purposes. Accordingly, the authority shall be
regarded as
48 performing an essential governmental function in the exercise of
the
49 powers conferred upon it by this title. The authority shall
not be
50 required to pay any fees, taxes, special ad valorem levies or
assess-
51 ments of any kind, whether state or local, including, but not
limited
52 to, fees, taxes, special ad valorem levies or assessments on real
prop-
53 erty, franchise taxes, sales taxes or other taxes, upon income or
with
54 respect to any property owned by it or under its jurisdiction,
control
55 or supervision, or upon the uses thereof, or upon or with respect
to its
56 activities or operations in furtherance of the powers conferred
upon it

S. 5905

27

1 by this title, or upon or with respect to any fares, tolls,
rentals,
2 rates, charges, fees, revenues or other income received by the
authori-
3 ty.
4 2. Any bonds, notes or other obligations issued pursuant to
this
5 title, and the income therefrom, shall be exempt from taxation.
6 § 3970. Actions against the authority. 1. Except in an action
for
7 wrongful death, no action or proceeding shall be prosecuted or
main-
8 tained against the authority for personal injury or damage to
real or
9 personal property alleged to have been sustained by reason of the
negli-
10 gence or wrongful act of the authority or of any director,
officer,

11 agent or employee thereof, unless: (a) it shall appear by and
as an
12 allegation in the complaint or moving papers that a notice of
claim
13 shall have been made and served upon the authority, within the
time
14 limit prescribed by and in compliance with section fifty-e of the
gener-
15 al municipal law; (b) it shall appear by and as an allegation
in the
16 complaint or moving papers that at least thirty days have elapsed
since
17 the service of such notice and that adjustment or payment
thereof has
18 been neglected or refused; and © the action or proceeding
shall be
19 commenced within one year after the happening of the event upon
which
20 the claim is based. An action against the authority for wrongful
death
21 shall be commenced in accordance with the notice of claim and time
limi-
22 tation provisions of title eleven of article nine of this chapter.
23 2. Wherever a notice of claim is served upon the authority, it
shall
24 have the right to demand an examination of the claimant relative to
the
25 occurrence and extent of the injuries or damages for which
claim is
26 made, in accordance with the provisions of section fifty-h of the
gener-
27 al municipal law.
28 3. The authority may require any person presenting for
settlement an
29 account or claim for any cause whatever against the authority
to be
30 sworn before a director, counsel or an attorney, officer or
employee
31 thereof designated for such purpose, concerning such account or
claim
32 and when so sworn, to answer orally as to any facts relative to
such
33 account or claim. The authority shall have power to settle or
adjust any
34 claims in favor of or against the authority.
35 4. The rate of interest to be paid by the authority upon any
judgment
36 for which it is liable, other than a judgment on bonds, notes or
other
37 obligations, shall not exceed the maximum rate of interest on
judgments
38 and accrued claims against municipal authorities as provided in

the
39 general municipal law. Interest on payments of principal or
interest on
40 any bonds, notes or other obligations in default shall accrue at
the
41 rate specified in the general municipal law until paid or
otherwise
42 satisfied.
43 5. The venue of every action, suit or special proceeding
brought
44 against the authority shall be the supreme court in the county.
45 6. Neither any director of the authority nor any officer,
employee, or
46 agent of the authority, while acting within the scope of his
or her
47 authority, shall be subject to any liability resulting from
exercising
48 or carrying out any of the powers given in this title.
49 7. (a) The state shall hold harmless and indemnify directors,
officers
50 and employees of the authority, all of whom shall be deemed
officers and
51 employees of the state for purposes of section seventeen of the
public
52 officers law, against any claim, demand, suit, or judgment
arising by
53 reason of any act or omission to act by such director,
officer, or
54 employee occurring in the discharge of his or her duties and within
the
55 scope of his or her service on behalf of the authority
including any
56 claim, demand, suit or judgment based on allegations that financial
loss

S. 5905

28

1 was sustained by any person in connection with the acquisition,
disposi-
2 tion or holding of securities or other obligations. In the event of
any
3 such claim, demand, suit or judgment, a director, officer or
employee of
4 the authority shall be held harmless and indemnified,
notwithstanding
5 the limitations of subdivision one of section seventeen of the
public
6 officers law, unless such individual is found by a final judicial
deter-
7 mination not to have acted, in good faith, for a purpose which he
or she
8 reasonably believed to be in the best interest of the authority

or not

9 to have had reasonable cause to believe that his or her conduct
was

10 lawful.

11 (b) In connection with any such claim, demand, suit, or
judgment, any

12 director, officer or employee of the authority shall be
entitled to

13 representation by private counsel of his or her choice in any
civil

14 judicial proceeding whenever the attorney general determines based
upon

15 his or her investigation and review of the facts and
circumstances of

16 the case that representation by the attorney general would be
inappro-

17 priate. The attorney general shall notify the individual in
writing of

18 such determination that the individual is entitled to be
represented by

19 private counsel. The attorney general may require, as a
condition to

20 payment of the fees and expenses of such representative, that
appropri-

21 ate groups of such individuals be represented by the same
counsel. If

22 the individual or groups of individuals are entitled to
representation

23 by private counsel under the provisions of this section, the
attorney

24 general shall so certify to the state comptroller. Reasonable
attor-

25 neys' fees and litigation expenses shall be paid by the state to
such

26 private counsel from time to time during the pendency of the
civil

27 action or proceeding, subject to certification that the
individual is

28 entitled to representation under the terms and conditions of
this

29 section by the authority, upon the audit and warrant of the state
comp-

30 troller. The provisions of this subdivision shall be in addition to
and

31 shall not supplant any indemnification or other benefits
heretofore or

32 hereafter conferred upon directors, officers, or employees of and
repre-

33 sentatives to the authority by section seventeen of the public
officers

34 law, by action of the authority or otherwise. The provisions of
this

35 subdivision shall inure only to directors, officers and employees
of the
36 authority, shall not enlarge or diminish the rights of any other
party,
37 and shall not impair, limit or modify the rights and obligations
of any
38 insurer under any policy of insurance.
39 § 3971. Audits. 1. The accounts of the authority shall be
subject to
40 the audit of the comptroller and the state comptroller. In
addition, the
41 authority shall be subject to an annual financial audit performed
by an
42 independent certified accountant selected by the authority. Such
audit
43 report shall be submitted to the county executive, the presiding
offi-
44 cer, the comptroller, the governor, the state comptroller, the
chair and
45 ranking minority member of the state senate finance committee and
the
46 chair and ranking minority member of the state assembly ways and
means
47 committee.
48 2. For each fiscal year during the existence of the authority,
and
49 within one hundred twenty days after the close of the county's
fiscal
50 year, the county shall submit its audited financial statements to
the
51 authority.
52 § 3972. Effect of inconsistent provisions. Insofar as the
provisions
53 of this title are inconsistent with the provisions of any other
act,
54 general or special, or of any charter, local law, ordinance or resol-
55 ution of any municipality, the provisions of this title
shall be
56 controlling. Nothing contained in this section shall be held to supple-

S. 5905

29

1 ment or otherwise expand the powers or duties of the authority
otherwise
2 set forth in this title.
3 § 3973. Separability; construction. If any clause, sentence,
para-
4 graph, section, or part of this title shall be adjudged by any
court of
5 competent jurisdiction to be invalid, such judgment shall not

affect,
6 impair or invalidate the remainder thereof, but shall be confined
in its
7 operation to the clause, sentence, paragraph, section, or part
thereof
8 directly involved in the controversy in which such judgment shall
have
9 been rendered. The provisions of this title shall be liberally
construed
10 to assist the effectuation of the public purposes furthered hereby.
11 § 4. Subdivision (a) of section 1261 of the tax law, as
amended by
12 chapter 86 of the laws of 2004, is amended to read as follows:
13 (a) All taxes, penalties and interest imposed by cities,
counties or
14 school districts under the authority of section twelve hundred
ten,
15 twelve hundred eleven, twelve hundred twelve or twelve hundred
twelve-A
16 of this article, which are collected by the commissioner,
shall be
17 deposited daily with such responsible banks, banking houses or
trust
18 companies, as may be designated by the state comptroller, to the
credit
19 of the comptroller, in trust for the cities, counties or
school
20 districts imposing the tax or for (i) the Nassau county interim
finance
21 authority or (ii) the Buffalo fiscal stability authority or
(iii) the
22 Erie county fiscal stability authority, created by the public
authori-
23 ties law, (i) to the extent that net collections from taxes
imposed by
24 Nassau county are payable to the Nassau county interim finance
authority
25 or (ii) to the extent that net collections from taxes imposed by
Erie
26 county or by the city of Buffalo are payable to the Buffalo
fiscal
27 stability authority or (iii) to the extent that net collections
from
28 taxes imposed by Erie county are payable to the Erie county
fiscal
29 stability authority, or for any public benefit corporation to which
the
30 tax may be payable pursuant to law. Such deposits and deposits
received
31 pursuant to subdivision (b) of section twelve hundred fifty-two of
this
32 article shall be kept in trust and separate and apart from all

other
33 monies in the possession of the comptroller. The comptroller
shall
34 require adequate security from all such depositories of such
revenue
35 collected by the commissioner, including the deposits received
pursuant
36 to subdivision (b) of section twelve hundred fifty-two of this article.
37 Any amount payable to such authorities pursuant to the public
authori-
38 ties law shall, at the time it is otherwise payable to (i) Nassau
coun-
39 ty, (ii) Erie county or the city of Buffalo, or (iii) Erie
county,
40 respectively, as specified in this section, be paid instead to
such
41 respective authority. Any amount payable to a public benefit
corporation
42 pursuant to law shall, at the time it is otherwise payable to the
taxing
43 jurisdiction as specified in this section, be paid instead to
such
44 public benefit corporation.
45 § 5. Subdivision © of section 1261 of the tax law, as
amended by
46 chapter 86 of the laws of 2004, is amended to read as follows:
47 © The comptroller, after reserving such refund fund and such
costs
48 shall, on or before the twelfth day of each month pay to the
appropriate
49 fiscal officers of the foregoing taxing jurisdictions the taxes,
penal-
50 ties and interest imposed by such jurisdictions under the
authority of
51 sections twelve hundred ten through twelve hundred twelve-A,
collected
52 by the commissioner pursuant to this article during the next
preceding
53 calendar month, provided, however, that the comptroller shall
on or
54 before the last day of June and December make a partial payment
consist-
55 ing of the collections made during and including the first
twenty-five
56 days of said months to said fiscal officers of the foregoing
taxing

S. 5905

30

1 jurisdictions. However, the taxes, penalties and interest from the
addi-
2 tional one percent rate which the city of Yonkers is

authorized to

3 impose pursuant to section twelve hundred ten, after the
comptroller has

4 reserved such refund fund and such cost shall be paid to the
special

5 sales and compensating use tax fund for the city of Yonkers
established

6 by section ninety-two-f of the state finance law at the times set
forth

7 in the preceding sentence. However, the taxes, penalties and
interest

8 which (i) the county of Nassau, (ii) the county of Erie, to the
extent

9 the county of Erie is contractually or statutorily obligated to
allocate

10 and apply or pay net collections to the city of Buffalo and to
the

11 extent that such county has set aside net collections for
educational

12 purposes attributable to the Buffalo school district, or the
city of

13 Buffalo or (iii) the county of Erie is authorized to impose
pursuant to

14 section twelve hundred ten of this article, other than such taxes
in the

15 amounts described, respectively, in subdivisions one and two of
section

16 one thousand two hundred sixty-two-e of this part, during the
period

17 that such section authorizes Nassau county to establish special or
local

18 assistance programs thereunder, together with any penalties and
interest

19 related thereto, and after the comptroller has reserved such refund
fund

20 and such costs, shall, commencing on the next payment date after
the

21 effective date of this sentence and of each month thereafter, until
such

22 date as (i) the Nassau county interim finance authority shall
have no

23 obligations outstanding, or (ii) the Buffalo fiscal stability
authority

24 shall cease to exist, or (iii) the Erie county fiscal stability
authori-

25 ty shall cease to exist, be paid by the comptroller,
respectively, to

26 (i) the Nassau county interim finance authority to be applied by
the

27 Nassau county interim finance authority, or (ii) to the Buffalo
fiscal

28 stability authority to be applied by the Buffalo fiscal

stability
29 authority, or (iii) to the Erie county fiscal stability authority
to be
30 applied by the Erie county fiscal stability authority, as the case
may
31 be, in the following order of priority: first pursuant to the
Nassau
32 county interim finance authority's contracts with bondholders or
the
33 Buffalo fiscal stability authority's contracts with bondholders
or the
34 Erie county fiscal stability authority's contracts with
bondholders,
35 respectively, then to pay the Nassau county interim finance
authority's
36 operating expenses not otherwise provided for or the Buffalo
fiscal
37 stability authority's operating expenses not otherwise provided
for or
38 the Erie county fiscal stability authority's operating expenses
not
39 otherwise provided for, respectively, and then (i) pursuant
to the
40 Nassau county interim finance authority's agreements with the
county of
41 Nassau, which agreements shall require the Nassau county interim
finance
42 authority to transfer such taxes, penalties and interest remaining
after
43 providing for contractual or other obligations of the Nassau
county
44 interim finance authority, and subject to any agreement between
such
45 authority and the county of Nassau, to the county of Nassau as
frequent-
46 ly as practicable; or (ii) pursuant to the Buffalo fiscal
stability
47 authority's agreements with the city of Buffalo, which agreements
shall
48 require the Buffalo fiscal stability authority to transfer such
taxes,
49 penalties and interest remaining after providing for
contractual or
50 other obligations of the Buffalo fiscal stability authority, and
subject
51 to any agreement between such authority and the city of Buffalo,
to the
52 city of Buffalo or the city of Buffalo school district, as the case
may
53 be, as frequently as practicable; or (iii) pursuant to the Erie
county
54 fiscal stability authority's agreements with the county of Erie,

which

55 agreements shall require the Erie county fiscal stability
authority to

56 transfer such taxes, penalties and interest remaining after
providing

S. 5905

31

1 for contractual or other obligations of the Erie county fiscal
stability

2 authority, and subject to any agreement between such authority
and the

3 county of Erie, to the county of Erie as frequently as practicable.

4 During the period that the comptroller is required to make
payments to

5 the Nassau county interim finance authority described in the
previous

6 sentence, the county of Nassau shall have no right, title or
interest in

7 or to such taxes, penalties and interest required to be paid
to the

8 Nassau county interim finance authority, except as provided in
such

9 authority's agreements with the county of Nassau. During the period
that

10 the comptroller is required to make payments to the Buffalo
fiscal

11 stability authority described in the second previous sentence, the
city

12 of Buffalo and such school district shall have no right, title or
inter-

13 est in or to such taxes, penalties and interest required to be
paid to

14 the Buffalo fiscal stability authority, except as provided in
such

15 authority's agreements with the city of Buffalo. During the period
that

16 the comptroller is required to make payments to the Erie county
fiscal

17 stability authority described in the third previous sentence, the
county

18 of Erie shall have no right, title or interest in or to such
taxes,

19 penalties and interest required to be paid to the Erie county
fiscal

20 stability authority, except as provided in such authority's
agreements

21 with the county of Erie. The amount so payable shall be certified
to the

22 comptroller by the commissioner or the commissioner's
delegate, who

23 shall not be held liable for any inaccuracy in such certificate.

24 Provided, however, any such certification may be based on such
informa-
25 tion as may be available to the commissioner at the time such
certif-
26 icate must be made under this section and may be estimated on the
basis
27 of percentages or other indices calculated from distributions for
prior
28 periods. Where the amount so paid over to any city, county,
school
29 district or the special sales and compensating use tax fund for the
city
30 of Yonkers in any such distribution or to such authority is more or
less
31 than the amount then due to such city, county, school district or
such
32 fund or to such authority, the amount of the overpayment or
underpayment
33 shall be certified to the comptroller by the commissioner or the
commis-
34 sioner's delegate, who shall not be held liable for any
inaccuracy in
35 such certificate. The amount of the overpayment or underpayment
shall be
36 so certified to the comptroller as soon after the discovery of the
over-
37 payment or underpayment as reasonably possible and subsequent
payments
38 and distributions by the comptroller to such city, county,
school
39 district or the special sales and compensating use tax fund for the
city
40 of Yonkers or to such authority shall be adjusted by subtracting
the
41 amount of any such overpayment from or by adding the amount of any
such
42 underpayment to such number of subsequent payments and
distributions as
43 the comptroller and the commissioner shall consider reasonable in
view
44 of the amount of the overpayment or underpayment and all other
facts and
45 circumstances.
46 § 6. Subdivision (d) of section 1262 of the tax law is
amended by
47 adding a new paragraph 3 to read as follows:
48 (3) Notwithstanding any provision of general, special or local
law to
49 the contrary, if at any time from the effective date of the Erie
county
50 fiscal stability authority act until December thirty-first, two
thousand

51 thirty-nine, any city in the county of Erie imposes sales and
compensat-
52 ing use taxes described in section twelve hundred ten of this
article,
53 then the county of Erie shall not be required to allocate under
para-
54 graph one of this subdivision any net collections from its taxes
imposed
55 during such period; instead it shall continue to allocate
net
56 collections from its taxes to any city in the county which does
not

S. 5905

32

1 impose such taxes and to the area of the county outside the
cities, in
2 accordance with the terms of the most current agreement among such
coun-
3 ty and the cities in the county entered into pursuant to subdivision ©
4 of this section.

5 § 7. Subdivision 3 of section 3857 of the public authorities
law, as
6 added by chapter 122 of the laws of 2003, is amended to read as follows:

7 3. The financial plan shall be in such form and shall contain
such
8 information for each year during which the financial plan is in
effect
9 as the authority may specify, and shall include the city and all
the
10 covered organizations, and shall, in such detail as the authority
from
11 time to time may prescribe, include (a) statements of all
estimated
12 revenues and of all expenditures and cash flow projections of the
city
13 and each covered organization, and (b) an accounting of the
expenditure
14 of efficiency incentive grants available to the city for each
year of
15 the plan.

16 § 8. The public authorities law is amended by adding a new
section

17 3857-a to read as follows:

18 § 3857-a. Efficiency incentive grants. By November tenth, two
thousand

19 five, the city shall develop and submit to the authority a
plan for
20 achieving recurring savings through innovations and reengineering.

21 Subject to appropriations therefor in the state fiscal years two
thou-

22 sand six—two thousand seven through two thousand ten—two

thousand

23 eleven, the authority shall provide grants to support such city
cost
24 saving activities. State funding during such five year period shall
not
25 exceed fifty million dollars, or ten million dollars
annually, for
26 grants provided pursuant to this section and section thirty-nine
hundred
27 fifty-seven-a of this article. Provided further, copies of such
city
28 plan shall be submitted to the director of the budget, the chair
of the
29 state senate finance committee and the chair of the state assembly
ways
30 and means committee.
31 § 9. Section 1210-D of the tax law, as added by a chapter of the
laws
32 of 2005, amending the tax law relating to providing an additional
one-
33 quarter of one percent rate of sales and compensating use tax
within
34 Erie county, as proposed in legislative bills numbers S.5705 and

A.8824,

35 is amended to read as follows:
36 § 1210-D. Sales and compensating use [tax] taxes within Erie county.
37 In addition to the taxes imposed by section twelve hundred ten of this
38 subpart or any other provision of [this article] law, the county of
Erie
39 is hereby authorized and empowered to adopt and amend [a] local
[law,
40 ordinance or resolution] laws, ordinances or resolutions imposing within
41 the territorial limits of such county [an] additional sales and compen-
42 sating use [tax] taxes at the rate of one-quarter of one percent for the
43 period beginning July first, two thousand five and ending November thir-
44 tieth, two thousand seven, which [tax] taxes shall be identical to the
45 [tax] taxes imposed by such county pursuant to the authority of section
46 twelve hundred ten of this subpart. Except as hereinafter provided, all
47 provisions of this article, including the definition and exemption
48 provisions and the provisions relating to the administration, collection
49 and distribution by the commissioner, shall apply for purposes of the
50 [tax imposed] taxes authorized by this section in the same manner and
51 with the same force and effect as if the language of this article had
52 been incorporated in full in this section and had expressly referred to
53 the [tax imposed] taxes authorized by this section; provided, however,
54 that any provision relating to a maximum rate shall be calculated with-
55 out reference to the rate of additional sales and compensating use
[tax]
56 taxes herein authorized. For purposes of part IV of this article, relat-

1 ing to the disposition of revenues resulting from taxes collected and
 2 administered by the commissioner, the additional sales and compensating
 3 use [tax herein provided shall be deemed to be] taxes authorized by this
 4 section imposed under the authority of section twelve hundred ten of
 5 this subpart and all provisions relating to the deposit, administration
 6 and disposition of taxes, penalties and interest relating to [a tax]
 7 taxes imposed by a county under the authority of section twelve hundred
 8 ten of this subpart shall, except as otherwise [specifically] provided
 9 in this section, apply to the additional sales and compensating use
 [tax

10 imposed pursuant to] taxes authorized by this section.

11 § 10. If any section, part or provision of this act shall be adjudged
 12 unconstitutional or invalid or ineffective by any court of this state,
 13 any party in interest shall have a direct appeal as of right to the
 14 court of appeals of the state of New York, and such appeal shall have
 15 preference over all other causes. Service upon the adverse party of a
 16 notice of appeal shall stay the effect of the judgment or order appealed
 17 from pending the hearing and determination of the appeal.

18 § 11. Separability. If any clause, sentence, paragraph, section or
 19 part of this act be adjudged by any court of competent jurisdiction to
 20 be unconstitutional, invalid, or ineffective, such judgment shall not
 21 affect, impair or invalidate the remainder thereof but shall be confined
 22 in its operation to the clause, sentence, paragraph, section or part
 23 thereof directly involved in the controversy in which such judgment
 24 shall have been rendered.

25 § 12. This act shall take effect immediately; provided, however that
 26 section nine of this act shall take effect on the same date and in the
 27 same manner as a chapter of the laws of 2005, amending the tax law
 28 relating to providing an additional one-quarter of one percent rate of
 29 sales and compensating use tax within Erie county as proposed in legis-
 30 lative bills numbers S. 5705 and A.8824, takes effect.

CHAPTER TEXT:

LAWS OF NEW YORK, 2005

CHAPTER 182

AN ACT to amend the public authorities law and the tax law, in relation
 to creating the Erie county fiscal stability authority

Became a law July 12, 2005, with the approval of the Governor. Passed on
 message of necessity pursuant to Article III, section 14 of the Constitution by a majority
 vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assem-bly, do enact as follows:

Section 1. Legislative findings. The legislature hereby finds and declares that a condition of fiscal stress exists in the county of Erie, as highlighted in recent reports published by the state comptroller and independent bond rating agencies. Such condition has contributed to a loss of confidence by investors in short-term and long-term obligations of the county after repeated downgrades and a current negative outlook of the county's bond ratings, thereby significantly adding to the costs of borrowing borne by the county of Erie taxpayers.

It is hereby further found and declared that the continued existence of such condition of fiscal stress is contrary to the public interest of the county and the state and seriously threatens to cause a decline in the general prosperity and economic welfare of the inhabitants of the county and the people of this state. It is in the public interest and is the policy of this state to assist municipalities such as the county of Erie in attempting to provide, without interruption, services essential to their inhabitants while meeting their obligations to the holders of their outstanding securities. The impairment of the credit of the county of Erie may affect the ability of other municipalities in the state to issue their obligations at normal interest rates. Such effect is a matter of state concern.

It is hereby further found and declared that intervention to provide enhanced budgetary discipline and short-term budgetary relief is necessary to allow the county to restore enduring fiscal health and the availability of adequate funding for the provision of essential services.

It is hereby further found and declared that an advisory and control finance authority should be established to oversee the county's budget, financial and capital plans; to issue bonds, notes or other obligations to achieve budgetary savings and to finance short-term cash flow or capital needs; and, if necessary, to develop financial plans on behalf of the county if the county is unwilling or unable to take the required steps toward fiscal stability.

It is noted that section 12 of article 8 of the constitution imposes a duty on this legislature to restrict the power of taxation, assessment, borrowing money and contracting indebtedness so as to prevent abuses in taxation and assessments and in the contracting of indebtedness by the county.

In order to fulfill such duty and based upon the condition of fiscal stress in the county of Erie, the legislature through this act creates

EXPLANATION—Matter in italics is new; matter in brackets [] is old law to be omitted.

CHAP. 182

2

an Erie county fiscal stability authority with certain advisory, borrowing and control powers, and imposes on the county of Erie certain requirements as to budgetary operations and fiscal management, including minimum annual requirements to produce recurring budget savings in increasing amounts during the current year and over the next four years. The agreements for financial and budgetary discipline between the authority and the county shall be for such period as is necessary under the standards set forth in this act to restore the county of Erie to fiscal integrity.

§ 2. Sections 3900, 3901 and 3902 of the public authorities law, as renumbered by chapter 122 of the laws of 2003, are renumbered sections 4000, 4001 and 4002.

§ 3. Article 10-D of the public authorities law is amended by adding a new title 3 to read as follows:

TITLE 3

ERIE COUNTY FISCAL STABILITY AUTHORITY

Section 3950. Short title.

3950-a. Legislative declaration of need for state intervention.

3951. Definitions.

3952. Erie county fiscal stability authority.

3953. Administration of the authority.

3954. General powers of the authority.

3955. Assistance to the authority; employees of the authority.

3956. County fiscal year two thousand five budget modification and four-year financial plan.

3957. County financial plans.

3957-a. Efficiency incentive grants.

3958. Advisory period.

3959. Control period.

3960. Additional provisions.

3961. Declaration of need for financing assistance to the county.

3962. Bonds, notes or other obligations of the authority.

3963. Remedies of bondholders.

3964. Intercept of county tax revenues and state aid revenues.

3965. Resources of the authority.

3966. Agreement with the state.

3967. Agreement with the county.

3968. Bonds, notes or other obligations legal for investment and deposit.

3969. Tax exemption.

3970. Actions against the authority.

3971. Audits.

3972. Effect of inconsistent provisions.

3973. Separability; construction.

§ 3950. Short title. This title shall be known and may be cited as the “Erie county fiscal stability authority act”.

§ 3950-a. Legislative declaration of need for state intervention. The legislature hereby finds and declares that the county of Erie is facing a severe fiscal crisis, and that the crisis cannot be resolved absent assistance from the state. The legislature further finds and declares that maintenance of a balanced budget by the county of Erie is a matter of overriding state concern, requiring the legislature to intervene to provide a means whereby: the long-term fiscal stability of the county will be assured, the confidence of investors in the county’s bonds and

notes is preserved, and the economy of both the region and the state as a whole is protected.

§ 3951. Definitions. For the purposes of this title, unless the context otherwise requires: 1. “Advisory period” means a period of time from the effective date of this title until the date when (a) the authority shall determine that for each fiscal year, through and including fiscal year two thousand twelve, that the county has adopted and adhered to budgets covering all expenditures the results of which do not show a major operating funds deficit when reported in accordance with generally accepted accounting principles, subject to the provisions of this title, and shall further determine that in the then current fiscal year there is a substantial likelihood that the results of the county’s operations will not show a deficit in the major operating funds when

so reported and (b) the comptroller shall certify that securities were sold by or for the benefit of the county during the fiscal year immediately preceding such date and the then current fiscal year in the general public market satisfied the financing requirements of the county during such period and that there is a substantial likelihood that such securities can be sold in the general public market from such date through the end of the next succeeding fiscal year in amounts which will satisfy substantially all of the capital and cash flow requirements of the county during such period in accordance with the financial plan then in effect.

2. "Authority" or "Erie county fiscal stability authority" or "ECFSA" means the public benefit corporation created by this title.
3. "Bonds, notes or other obligations" means bonds, notes and other evidences of indebtedness, issued or incurred by the authority.
4. "Comptroller" means the comptroller of the county.
5. "Control period" means a period determined by the authority in accordance with section thirty-nine hundred fifty-nine of this title.
6. "County" means Erie county.
7. "County charter" means the county government law of Erie county, as amended.
8. "County executive" means the county executive of the county.
9. "County tax revenues" means net collections set aside for county purposes pursuant to subdivision (a) of section twelve hundred sixty-two of the tax law, from the county's sales and compensating use taxes imposed pursuant to the authority of subpart B of part one of article twenty-nine of the tax law.
10. "Covered organization" means any governmental agency, public authority or public benefit corporation which receives or may receive moneys directly, indirectly or contingently from the county, but excluding the authority and (a) any other governmental agency, public authority or public benefit corporation specifically exempted from the provisions of this title by order of the authority upon application of such agency, public authority, or corporation to the authority or on the authority's own motion upon a finding by the authority that such exemption does not materially affect the ability of the county to adopt and maintain a budget pursuant to the provisions of this title, or (b) any state public authority defined in section two hundred one of the civil service law, unless specifically named above; provided, however, no municipality or school district shall be treated as a covered organization solely because it shares sales and compensating use tax revenue with the county, provided further, that the authority may terminate any exemption granted by order of the authority pursuant to this subdivision

CHAP. 182

4

upon a determination that the circumstances upon which such exemption was granted are no longer applicable.

11. "Director of the budget" means the director of the budget of the state.
12. "ECFSA assistance" means: (a) the proceeds of any deficit financing authorized by the authority; or (b) the amount of debt service savings in a given county fiscal year generated from the proceeds of bonds, notes or other obligations of the authority made available to or for the benefit of the county or any covered organization as determined by the authority, or some combination thereof pursuant to the provisions of sections thirty-nine hundred fifty-six and thirty-nine hundred fifty-seven of this title. Such assistance shall be made available only upon a declaration of need by the county pursuant to section thirty-nine hundred sixty-one of this title and the approval of the authority.
13. "Financeable costs" or "costs" means costs to finance (a) amounts necessary to finance a portion of the operating costs of the county or any covered organization as provided in sections thirty-nine hundred fifty-six and section thirty-nine hundred fifty-seven of this

- title, to the extent approved by the authority, (b) amounts necessary to accomplish a refunding, repayment or restructuring of all or a portion of the county's outstanding indebtedness or that of any covered organization, (c) cash flow needs of the county or any covered organization, (d) any object or purpose of the county or any covered organization, for which a period of probable usefulness is prescribed in section 11.00 of the local finance law, including the costs of any preliminary studies, surveys, maps, plans, estimates and hearings, or (e) incidental costs, including, but not limited to, legal fees, printing or engraving, publication of notices, taking of title, apportionment of costs, and capitalized interest, insurance premiums, costs related to items authorized in subdivisions seven through nine of section thirty-nine hundred fifty-four of this title or any underwriting or other costs incurred in connection with the financing thereof; provided however that, to the maximum extent practicable, all financeable costs shall not adversely affect the requirements of subdivision two of section thirty-nine hundred fifty-eight of this title.
14. "Financial plan" means the financial plan of the county and the covered organizations to be developed pursuant to section thirty-nine hundred fifty-seven of this title, as from time to time amended.
 15. "Legislature" means the legislature of the county.
 16. "Major operating funds" means the county general fund, the social services fund, the county road fund, the capital fund, the debt service fund, the sewer fund, together with any other funds of the county or a covered organization from time to time designated by the authority.
 17. "Presiding officer" means the presiding officer of the legislature elected pursuant to the rules of the legislature.
 18. "Projected gap" means the excess, if any, of annual aggregate projected expenditures over annual aggregate projected revenues for the major operating funds in each year of a financial plan as determined by the county and certified by the authority. For purposes of determining the projected gap in each fiscal year, annual aggregate projected revenues shall not include the amount of ECFSAs assistance expected to be available for such fiscal year.
 19. "Revenues" means revenues of the authority consisting of county tax revenues, state aid revenues, and all other aid, rents, fees, charges, payments and other income and receipts paid or payable to the

authority or a trustee for the account of the authority to the extent such amounts are pledged to bondholders.

20. "State" means the state of New York.
 21. "State aid" means aid and incentives for municipalities, any successor type of aid and any new aid appropriated by the state as local government assistance for the benefit of the county.
 22. "State aid revenues" means state aid paid by the state comptroller to the authority pursuant to this title.
 23. "State comptroller" means the comptroller of the state.
- § 3952. Erie county fiscal stability authority. 1. There is hereby created the Erie county fiscal stability authority. The authority shall be a corporate governmental agency and instrumentality of the state constituting a public benefit corporation.
2. The authority shall conduct meetings as often as deemed necessary to accomplish its purposes, but not less than quarterly during a control period or annually during an advisory period.
 3. The authority shall continue until its control, advisory or other responsibilities, and its liabilities have been met or otherwise discharged, which in no event shall be later than

December thirty-first, two thousand thirty-nine. Upon the termination of the authority, all of its property and assets shall pass to and be vested in the county.

§ 3953. Administration of the authority. 1. The authority shall be administered by seven directors appointed by the governor. Of the seven directors, one each shall be appointed on the written recommendation of the temporary president of the state senate, the speaker of the state assembly and the state comptroller, respectively. One member appointed directly by the governor and the members appointed on the recommendation of the temporary president of the state senate, the recommendation of the speaker of the state assembly and the recommendation of the state comptroller shall be residents of the county. Each director shall be appointed for a term of four years, provided however, that two of the directors first appointed by the governor shall serve for a term ending December thirty-first, two thousand nine, and the remaining five directors first appointed shall serve for the following terms: the directors appointed on recommendation of the temporary president of the state senate, the speaker of the state assembly and the state comptroller shall serve for a term ending December thirty-first, two thousand ten and the two remaining directors first appointed directly by the governor shall serve for a term ending on December thirty-first, two thousand eleven. Each director shall hold office until his or her successor has been appointed and qualified. Thereafter each director shall serve a term of four years, except that any director appointed to fill a vacancy shall serve only until the expiration of his or her predecessor's term.

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 may prescribe. 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 may prescribe.

3. The directors of the authority shall serve without salary, but each director shall be reimbursed for actual and necessary expenses incurred in the performance of such director's official duties as a director of the authority.
4. Notwithstanding any inconsistent provision of any general, special or local law, ordinance, resolution or charter, no officer, member or employee of the state, any city, county, town or village, any govern-

CHAP. 182

6

mental entity operating any public school or college, any school district or any other public agency or instrumentality which exercises governmental powers under the laws of the state, shall forfeit his or her office or employment by reason of his or her acceptance of appointment as a director, officer or employee of the authority; nor shall service as such director, officer or employee of the authority be deemed incompatible or in conflict with such office or employment.

5. Four directors shall constitute a quorum for the transaction of any business or the exercise of any power of the authority. No action shall be taken by the authority except pursuant to a favorable vote of at least four directors participating in a meeting at which such action is taken.
6. The authority shall appoint a treasurer and may appoint officers and agents as it may require and prescribe their duties.
7. At least annually, commencing no more than one year after the date on which authority bonds, notes or other obligations are first issued, the authority shall report to the county executive, legislature, comptroller, the director of the budget, the chair of the state senate finance committee, the chair of the state assembly ways and means committee and the

state comptroller on the amount of financing and the cost savings for the county over the past year.

§ 3954. General powers of the authority. Except as otherwise limited by this title, the authority shall have the following powers in addition to those specially conferred elsewhere in this title, subject only to agreements with bondholders:

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 management and subject to agreements with its bondholders, to make and alter rules and regulations governing the exercise of its powers and fulfillment of its purposes under this title;
4. to make and execute contracts and all other instruments or agreements necessary or convenient to carry out any powers and functions expressly given in this title;
5. to commence any action to protect or enforce any right conferred upon it by any law, contract or other agreement;
6. to borrow money and issue bonds, notes or other obligations, or to refund the same, and to provide for the rights of the holders of its bonds, notes or other obligations;
7. as security for the payment of the principal of and interest on any bonds, notes or other obligations issued by it pursuant to this title and any agreements made in connection therewith and for its obligations under bond facilities, to pledge all or any part of its revenues or assets;
8. to procure insurance, letters of credit or other credit enhancement with respect to its bonds, notes or other obligations, or facilities for the payment of tenders of such bonds, notes or other obligations or facilities for the payment upon maturity of short-term notes not renewed;
9. to enter into interest rate exchange or similar arrangements with any person under such terms and conditions as the authority may determine, not inconsistent with the general laws of this state and other provisions of this title, including, without limitation, provisions as to default or early termination and indemnification by the authority or any other party thereto for loss of benefits as a result thereof; provided, however, that such exchanges or similar arrangements shall be

limited to twenty-five percent of the amount authorized in subdivision one of section thirty-nine hundred sixty-two of this title to pay the financeable costs described in paragraph (a), (b), (d) or (e) of subdivision thirteen of section thirty-nine hundred fifty-one of this title;

10. to procure insurance, letters of credit or other credit enhancement with respect to arrangements described in subdivision nine of this section;
11. to accept gifts, grants, loans or contributions of funds or financial or other aid in any form from the county, state or federal government or any agency or instrumentality thereof, or from any other source and to expend the proceeds for any of its corporate purposes in accordance with the provisions of this title;
12. subject to the provisions of any contract with bondholders in respect of escrow accounts to secure bonds that have been refunded or debt service funds in which revenues are deposited to secure bonds, notes or other indebtedness issued under this act, 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 authority, in (a) obligations of the state or the United States government, (b) obligations the principal and interest of which are guaranteed by the state or the United States government, (c) certificates of deposit, whether negotiable or non-negotiable, and banker's acceptances of any of the fifty largest banks in the United States which bank, at the time of investment, has an outstanding unsecured,

uninsured and unguaranteed debt issue ranked by two nationally recognized independent rating agencies at a rating category that is no lower than the then current rating of the authority's bonds, notes or other obligations, (d) commercial paper of any bank or corporation created under the laws of either the United States or any state of the United States which commercial paper, at the time of the investment, has received the highest rating of two nationally recognized independent rating agencies, (e) bonds, debentures, or other evidences of indebtedness, issued or guaranteed at the time of the investment by the federal national mortgage association, federal home loan mortgage corporation, student loan marketing association, federal farm credit system, or any other United States government sponsored agency, provided that at the time of the investment such agency receives, or its obligations receive, any of the three highest rating categories of two nationally recognized independent rating agencies, (f) any bonds or other obligations of any state or the United States of America or of any political subdivision thereof or any agency, instrumentality or local governmental unit of any such state or political subdivision which bonds or other obligations, at the time of the investment have received any of the three highest ratings of two nationally recognized independent rating agencies, (g) any repurchase agreement with any bank or trust company organized under the laws of any state of the United States of America or any national banking association or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities described in paragraph (a), (b) or (e) of this subdivision, which securities shall at all times have a market value of not less than the full amount of the repurchase agreement and be delivered to another bank or trust company organized under the laws of the state or any national banking association domiciled in the state, as custodian, and (h) reverse repurchase agreements with any bank or trust company organized under the laws of any state of the United States of America or any national banking association or

CHAP. 182

8

government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities described in paragraph (a), (b) or (e) of this subdivision which securities shall at all times have a market value of not less than the full amount of the repurchase agreement and be delivered to another bank or trust company organized under the laws of the state or any national banking association domiciled in the state, as custodian.

13. to appoint such officers and employees as it may require for the performance of its duties and to fix and determine their qualifications, duties, and compensation, and to retain or employ counsel, auditors and private financial consultants and other services on a contract basis or otherwise for rendering professional, business or technical services and advice; and, in taking such actions, the authority shall consider the financial impact on the county.
14. 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; provided, however, such authority shall under no circumstances acquire, hold or transfer title to, lease, own beneficially or otherwise, manage, operate or otherwise exercise control over any real property, any improvement to real property or any interest therein other than a lease or sublease of office space deemed necessary or desirable by the authority.

§ 3955. Assistance to the authority; employees of the authority. 1. With the consent of any public corporation, the authority may use agents, employees and facilities thereof, paying to such public corporation its agreed proportion of the compensation or costs.

2. Officers and employees of state or county agencies may be transferred to the authority without examination and without loss of any civil service or retirement status or rights.

Any officer or employee of the authority who heretofore acquired or shall hereafter acquire such position status by transfer and who at the time of such transfer was a member of the New York state and local employees' retirement system shall continue to be a member of such system as long as he or she continues in such service, and shall continue to have all the rights, privileges and obligations of membership in such system.

- § 3956. County fiscal year two thousand five budget modification and four-year financial plan. 1. Not later than October first, two thousand five, the county executive, upon approval by the legislature, shall submit to the authority a budget modification and financial plan consistent with the financial plan requirements contained in section thirty-eight hundred fifty-seven of this article which may reflect a declaration of need as provided for in section thirty-nine hundred sixty-one of this title; provided, however, in county fiscal year two thousand five such declaration of need shall not exceed one hundred twenty-five million dollars in ECFSA assistance as defined in paragraph (a) of subdivision twelve of section thirty-nine hundred fifty-one of this title. The plan shall cover the county's two thousand five fiscal year and the three subsequent fiscal years.
2. Not later than fifteen days after such submission, the authority shall approve or disapprove the financial plan.
 3. In the event the authority shall disapprove such financial plan based on disapproval of certain actions or assumptions, the authority shall promptly thereafter notify the county executive and legislature of its reasons. Within fifteen days from the receipt of such notification the county executive, upon the approval of the legislature, shall modify

the financial plan. If the county fails to make such modifications, the authority shall adopt a resolution so finding.

§ 3957. County financial plans. 1. Commencing with the county's two thousand six fiscal year, the county executive shall prepare and submit to the authority a four-year financial plan, and the county executive's proposed county budget, not later than the date required for submission of such budget to the legislature pursuant to the county charter. Such financial plan shall, in addition to the requirements for financial plans set forth in subdivisions two and three of this section, contain actions sufficient to ensure with respect to the major operating funds for each fiscal year of the plan that annual aggregate operating expenses for such fiscal year shall not exceed annual aggregate operating revenues for such fiscal year. For purposes of determining operating revenues in the fiscal years two thousand five through two thousand nine, such plan may assume receipt by the county of ECFSA assistance in the following collective amounts for each respective fiscal year:

Amount	Fiscal Year
2005 amount	2005
2006 amount	2006
2007 amount	2007
2008 amount	2008
2009 amount	2009

As used in this subdivision:

“2005 amount” means that amount expected to be provided by the authority to ensure balanced major operating fund operations upon its determination that the county has taken recurring actions to close at a minimum between ten per centum and fifteen per centum of the projected gap. “2006 amount” means that amount expected to be provided by the authority to ensure balanced major operating fund operations upon its determination that the county has taken

recurring actions to close at a minimum between thirty-five per centum and forty per centum of the projected gap.

“2007 amount” means that amount expected to be provided by the authority to ensure balanced major operating fund operations upon its determination that the county has taken recurring actions to close at a minimum between forty-five per centum and fifty per centum of the projected gap. “2008 amount” means that amount expected to be provided by the authority to ensure balanced major operating fund operations upon its determination that the county has taken recurring actions to close at a minimum between sixty per centum and sixty-five per centum of the projected gap. “2009 amount” means that amount expected to be provided by the authority to ensure balanced major operating fund operations upon its determination that the county has taken recurring actions to close at a minimum between eighty per centum and eighty-five per centum of the projected gap.

2. Pursuant to the procedures contained in this subdivision, each year during an advisory period or during a control period the county shall develop, and may from time to time modify, taking into account recommendations of the authority, a four-year financial plan covering the county and the covered organizations. Each financial plan and financial plan modification shall conform to the requirements of paragraph (a) of this subdivision and shall provide that the major operating funds of the county will be balanced in accordance with generally accepted accounting principles. The financial plan shall be developed and approved, and may from time to time be modified, in accordance with the following procedures:

CHAP. 182

10

- (a) The county executive shall submit to the authority a certificate stating that the budget submitted to the authority is consistent with the financial plan submitted therewith and that operation within the budget is feasible.
- (b) Not more than twenty days after submission of a financial plan or more than fifteen days after submission of a financial plan modification, the authority shall determine whether the financial plan or financial plan modification is complete and complies with the provisions of this section and the other requirements of this title, and shall submit its recommendations with respect to the financial plan or financial plan modification in accordance with the provisions of this subdivision.
- (c) Upon the approval by the county of a budget in accordance with the provisions of the county charter, the county executive shall submit such approved budget and financial plan to the authority accompanied by expenditure, revenue and cash flow projections on a quarterly basis and certify to the authority that such budget is consistent with the financial plan to be submitted to the authority.
- (d) If the authority determines that the financial plan or financial plan modification provided pursuant to paragraph (c) or (f) of this subdivision is complete and complies with the standards set forth in this subdivision, the authority shall make a certification to the county setting forth revenue estimates agreed to by the authority in accordance with such determination.
- (e) The authority shall, in the event it disagrees with elements of the financial plan provided pursuant to paragraph (c) or (f) of this subdivision provide notice thereof to the county, with copies to the director of the budget, the state comptroller, the chair of the state assembly ways and means committee and the chair of the state senate finance committee, if, in the judgment of the authority, such plan: (i) is incomplete; (ii) fails to contain projections of revenues and expenditures that are based on reasonable and appropriate assumptions and methods of estimations; (iii) fails to provide that operations of the county and the covered organizations will be conducted within the cash resources available; or (iv) fails to comply with the provisions of this title or other requirements of law.

- (f) After the initial adoption of an approved financial plan, the revenue estimates certified by the authority and the financial plan shall be regularly reexamined by the authority in consultation with the county and the covered organizations and the county executive shall provide a modified financial plan in such detail and within such time periods as the authority may require. In the event of reductions in such revenue estimates, or in the event the county or a covered organization shall expend funds at a rate that would exceed the aggregate expenditure limitation for the county or covered organization prior to the expiration of the fiscal year, the county executive shall submit a financial plan modification to effect such adjustments in revenue estimates and reductions in total expenditures as may be necessary to conform to such revised revenue estimates or aggregate expenditure limitations.
- (g) If, within a time period specified by the authority, the county fails to make such modifications after reductions in revenue estimates, or to provide a modified plan in detail and within such time period required by the authority, the authority shall adopt a resolution so finding.
- (h) The county shall amend its budget or shall submit a financial plan modification for the approval of the authority such that the county's budget and the approved financial plan shall be consistent. In no event

shall the county operate under a budget that is inconsistent with an approved financial plan.

- 3. The financial plan shall be in such form and shall contain such information for each year during which the financial plan is in effect as the authority may specify, and shall include the county and all the covered organizations, and shall, in such detail as the authority from time to time may prescribe, include (a) statements of all estimated revenues and of all expenditures and cash flow projections of the county and each covered organization, and (b) an accounting of the expenditure of efficiency incentive grants available to the county for each year of the plan.
- 4. The financial plan shall include any information which the authority may request to satisfy itself that: (a) projected employment levels, collective bargaining agreements and other actions relating to employee costs, capital construction and such other matters as the authority may specify are consistent with the provisions made for such obligations in the financial plan; (b) the county and the covered organizations are taking whatever action is necessary with respect to programs mandated by state and federal law to ensure that expenditures for such programs are limited to and covered by the expenditures stated in the financial plan;
- (c) adequate reserves are provided to maintain essential programs in the event revenues have been overestimated or expenditures underestimated for any period; and (d) the county has adequate cash resources to meet its obligations. In addition, except to the extent such reporting requirements may be modified pursuant to agreement between the authority and the county, for each fiscal year occurring during a control period, or while bonds, notes or other obligations issued pursuant to this title are outstanding, the county executive shall prepare a quarterly report of summarized budget data depicting overall trends, by major category within funds, of actual revenues and budget expenditures for the entire budget rather than individual line items, as well as updated quarterly cash flow projections of receipts and disbursements. Such reports shall compare revenue estimates and appropriations as set forth in such budget and in the quarterly revenue and expenditure projections submitted therewith, with the actual revenues and expenditures made to date. Such reports shall also compare actual receipts and disbursements with the estimates contained in the cash flow projections, together with variances and their explanation. All quarterly reports shall be

accompanied by recommendations from the county executive to the legislature setting forth any remedial action necessary to resolve any unfavorable budget variance including the overestimation of revenues and the underestimation of appropriations. These reports shall be completed within thirty days after the end of each quarter and shall be submitted to the legislature, the authority, the director of the budget, the chair of the state senate finance committee, the chair of the state assembly ways and means committee and the state comptroller. For each fiscal year occurring during a control or advisory period or while bonds, notes or other obligations issued pursuant to this title are outstanding, the county executive shall submit a proposed budget or revision thereto to the authority concurrent with submission to the legislature, and shall submit the adopted budget to the authority immediately upon its adoption.

5. For each financial plan and financial plan modification to be prepared and submitted by the county executive to the authority pursuant to the provisions of this section, the covered organizations shall submit to the county such information with respect to their projected

CHAP. 182

12

expenditures, revenues and cash flows for each of the years covered by such financial plan or modification as the county executive shall determine.

§ 3957-a. Efficiency incentive grants. Along with the county financial plan commencing with the county's two thousand six fiscal year, the county shall develop and submit to the authority a plan for achieving recurring savings through innovations and reengineering. Subject to appropriations therefor in the state fiscal years two thousand six—two thousand seven through two thousand ten—two thousand eleven, the authority shall provide grants to support such county cost saving activities. State funding during such five year period shall not exceed fifty million dollars, or ten million dollars annually, for grants provided pursuant to this section and section thirty-eight hundred fifty-seven-a of this article. Provided further, copies of such county plan shall be submitted to the director of the budget, the chair of the state senate finance committee and the chair of the state assembly ways and means committee.

§ 3958. Advisory period. 1. During any advisory period the authority shall: (a) obtain from the county, the covered organizations and the state comptroller, all information, financial statements and projections, budgetary data and information, and management reports and materials as the authority deems necessary or desirable to accomplish the purposes of this title; and inspect, copy and audit such books and records of the county and the covered organizations as the authority deems necessary or desirable to accomplish the purposes of this title;

- (b) review the operation, management, efficiency and productivity of county operations and of any covered organization's operations as the authority may determine, and make reports and recommendations thereon; examine the potential to enhance the revenue of the county or any covered organization; audit compliance with the financial plan in such areas as the authority may determine; recommend to the county and the covered organizations such measures relating to their operations, management, efficiency and productivity as the authority deems appropriate to reduce costs, enhance revenue and improve services so as to advance the purposes of this title;
- (c) consult with the county in the preparation of the budget of the county, comment on the provisions of the budget, the financial plan and the financial plan modifications of the county as the authority deems necessary or appropriate;

- (d) review and comment on the terms of any proposed borrowing, including the prudence of each proposed issuance of bonds or notes to be issued by the county or any covered organization; and
- (e) assess the impact of any collective bargaining agreement to be entered into by the county and such contracts, that, in the judgment of the authority, may have a significant impact on the county's long-term fiscal condition.

2. During any advisory period, the county shall promptly provide all information requested by the authority, review the comments, assessments, reports and recommendations of the authority and publicly respond thereto, addressing such matters as have been raised by the authority.

§ 3959. Control period. 1. The authority shall impose a control period at any time that any of the following events has occurred or that there is a substantial likelihood and imminence of such occurrence: (a) the county shall have failed to adopt a balanced budget within time frames prescribed in the county charter, financial plan or budget modification as required by sections thirty-nine hundred fifty-six and thirty-nine

hundred fifty-seven of this title; (b) the county shall have failed to pay the principal of or interest on any of its bonds or notes when due;

(c) the county shall have incurred a major operating funds deficit of one percent or more in the aggregate results of operations of such funds of the county during its fiscal year assuming all revenues and expenditures are reported in accordance with generally accepted accounting principles, subject to the provisions of this title; (d) the comptroller's certification at any time, at the request of the authority or on the comptroller's initiative, which certification shall be made from time to time as promptly as circumstances warrant and reported to the authority, that on the basis of facts existing at such time the comptroller could not make the certification described in paragraph (b) of subdivision one of section thirty-nine hundred fifty-one of this title; or (e) the county shall have violated any provision of this title. The authority shall terminate any such control period when it determines that none of the conditions which would permit the authority to impose a control period exist. After termination of a control period the authority shall annually consider paragraphs (a) through (e) of this subdivision and determine whether, in its judgment, any of the events described in such paragraphs have occurred and the authority shall publish each such determination. Any certification made by the comptroller hereunder shall be based on the comptroller's written determination which shall take into account a report and opinion of an independent expert in the marketing of municipal securities selected by the authority, and the opinion of such expert and any other information taken into account shall be made public when delivered to the authority. Notwithstanding any part of the foregoing to the contrary, in no event shall any control period continue beyond the later of (i) December thirty-first, two thousand thirty-nine, or (ii) the date when all bonds of the authority are refunded, discharged or otherwise defeased.

2. In carrying out the purposes of this title during any control period, the authority:

- (a) shall approve or disapprove the financial plan and the financial plan modifications of the county, as provided in section thirty-nine hundred fifty-seven of this title, and shall formulate and adopt its own modifications to the financial plan, as necessary; such modifications shall become effective upon their adoption by the authority;
- (b) may set a maximum level of spending for any proposed budget of any covered organization;

(c) may impose a wage and/or hiring freeze: (i) During a control period, upon a finding by the authority that a wage and/or hiring freeze is essential to the adoption or maintenance of a county budget or a financial plan that is in compliance with this title, the authority shall be empowered to order that all increases in salary or wages of employees of the county and employees of covered organizations which will take effect after the date of the order pursuant to collective bargaining agreements, other analogous contracts or interest arbitration awards, now in existence or hereafter entered into, requiring such salary or wage increases as of any date thereafter are suspended. Such order may also provide that all increased payments for holiday and vacation differentials, shift differentials, salary adjustments according to plan and step-ups or increments for employees of the county and employees of covered organizations which will take effect after the date of the order pursuant to collective bargaining agreements, other analogous contracts or interest arbitration awards requiring such increased payments as of any date thereafter are, in the same manner, suspended. For the purposes

CHAP. 182

14

of computing the pension base of retirement allowances, any suspended salary or wage increases and any other suspended payments shall not be considered as part of compensation or final compensation or of annual salary earned or earnable;

- (ii) Notwithstanding the provisions of subparagraph (i) of this paragraph, this subdivision shall not be applicable to employees of the county or employees of a covered organization subject to a collective bargaining agreement or an employee of the county or a covered organization not subject to a collective bargaining agreement where the collective bargaining representative or such unrepresented employee has agreed to a deferral of salary or wage increase, by an instrument in writing which has been certified by the authority as being an acceptable and appropriate contribution toward alleviating the fiscal crisis of the county. Any such agreement to a deferral of salary or wage increase may provide that for the purposes of computing the pension base of retirement allowances, any deferred salary or wage increase may be considered as part of compensation or final compensation or of annual salary earned or earnable;
- (iii) Notwithstanding the provisions of subparagraphs (i) and (ii) of this paragraph, no retroactive pay adjustments of any kind shall accrue or be deemed to accrue during the period of wage freeze, and no such additional amounts shall be paid at the time a wage freeze is lifted, or at any time thereafter;
- (d) shall periodically evaluate the suspension of salary or wage increases or suspensions of other increased payments or benefits, and may, if it finds that the fiscal crisis, in the sole judgment of the authority has abated, terminate such suspensions;
- (e) shall review and approve or disapprove any collective bargaining agreement to be entered into by the county or any covered organization, or purporting to bind, the county or any covered organization. Prior to entering into any collective bargaining agreement, the county or any covered organization shall submit a copy of such collective bargaining agreement to the authority, accompanied by an analysis of the projected costs of such agreement and a certification that execution of the agreement will be in accordance with the financial plan. Such submission shall be in such form and include such additional information as the authority may prescribe. The authority shall promptly review the terms of such collective bargaining agreement and the supporting information in order to determine compliance with the financial plan, and shall disapprove any collective bargaining agreement which, in its judgment, would be inconsistent with the financial plan. No collective bargaining agreement binding, or

purporting to bind, the county or any covered organization after the effective date of this title shall be valid and binding upon the county or any covered organization unless first approved by resolution of the authority;

- (f) shall act jointly with the county in selecting members of any interest arbitration panel. Notwithstanding any other evidence presented by the county, the covered organization or any recognized employee organization, the arbitration panel must, prior to issuing any final decision, provide the authority with the opportunity to present evidence regarding the fiscal condition of the county;
- (g) shall take any action necessary in order to implement the financial plan should the county or any covered organization have failed to comply with any material action necessary to fulfill the plan, provided, however, the authority shall provide seven days notice of its determi-

15 CHAP. 182

nation that the county or any covered organization has not complied prior to taking any such action;

- (h) may review and approve or disapprove contracts or other obligations binding or purporting to bind the county or any covered organization;
- (i) shall, with respect to any proposed borrowing by or on behalf of the county or any covered organization on or after July first, two thousand five, review the terms of and comment, within thirty days after notification by the county or covered organization of a proposed borrowing, on the prudence of each proposed issuance of bonds or notes to be issued by the county or covered organization and no such borrowing shall be made unless first reviewed, commented upon and approved by the authority. The authority shall comment within thirty days after notification by the county or covered organization of a proposed borrowing to the county executive, the comptroller, the legislature, the director of the budget, the chair of the state senate finance committee, the chair of the state assembly ways and means committee and the state comptroller and indicate approval or disapproval of the proposed borrowing. Notwithstanding the foregoing, neither the county nor any covered organization shall be prohibited from issuing bonds or notes to pay outstanding bonds or notes; and, provided further, revenue anticipation notes issued in July two thousand five, shall be excluded from this requirement;
- (j) may review the operation, management, efficiency and productivity of the county and any covered organizations as the authority may determine, and make reports thereon; examine the potential to enhance the revenue of the county or any covered organization; audit compliance with the financial plan in such areas as the authority may determine; recommend to the county and the covered organizations such measures relating to their operations, management, efficiency and productivity as the authority deems appropriate to reduce costs, enhance revenue, and improve services so as to advance the purposes of this title;
- (k) may review and approve or disapprove the terms of any proposed settlement of claims against the county or any covered organization in excess of fifty thousand dollars;
- (l) may obtain from the county, the covered organizations, the comptroller, and the state comptroller, as appropriate, all information required pursuant to this section, and such other financial statements and projections, budgetary data and information, and management reports and materials as the authority deems necessary or desirable to accomplish the purposes of this title; and inspect, copy and audit such books and records of the county and the covered organizations as the authority deems necessary or desirable to accomplish the purposes of this title;

- (m) may perform such audits and reviews of the county and any agency thereof and any covered organizations as it deems necessary; and
 - (n) may issue, from time to time and to the extent it deems necessary or desirable in order to accomplish the purposes of this title, to the appropriate official of the county and each covered organization, such orders necessary to accomplish the purposes of this title, including, but not limited to, timely and satisfactory implementation of an approved financial plan. Any order so issued shall be binding upon the official to whom it was issued and failure to comply with such order shall subject the official to the penalties described in subdivision three of this section.
3. (a) During any control period: (i) no officer or employee of the county or of any of the covered organizations shall make or authorize an obligation or other liability in excess of the amount available therefor

CHAP. 182

16

under the financial plan as then in effect; (ii) no officer or employee of the county or of any of the covered organizations shall involve the county or any of the covered organizations in any contract or other obligation or liability for the payment of money for any purpose required to be approved by the authority unless such contract has been so approved and unless such contract or obligation or liability is in compliance with the approved financial plan as then in effect.

- (b) No officer or employee of the county or any of the covered organizations shall take any action in violation of any valid order of the authority or shall fail or refuse to take any action required by any such order or shall prepare, present or certify any information (including any projections or estimates) or report to the authority or any of its agents that is false or misleading, or, upon learning that any such information is false or misleading, shall fail promptly to advise the authority or its agents thereof.
- (c) In addition to any penalty or liability under any other law, any officer or employee of the county or any of the covered organizations who shall violate paragraph (a) or (b) of this subdivision shall be subject to appropriate administrative discipline, including, when circumstances warrant, suspension from duty without pay or removal from office by order of either the governor or the county executive; and any officer or employees of the county or any of the covered organizations who shall knowingly and willfully violate paragraph (a) or (b) of this subdivision shall, upon conviction, be guilty of a misdemeanor.
- (d) In the case of a violation of paragraph (a) or (b) of this subdivision by an officer or employee of the county or of a covered organization, the county executive or the chief executive officer of such covered organization shall immediately report to the authority all pertinent facts together with a statement of the action taken thereon.

§ 3960. Additional provisions. 1. Notwithstanding any provision to the contrary in title six-A of article two of the local finance law, neither the county nor any covered organization shall file any petition authorized by such title six-A without the approval of the authority and the state comptroller. No such petition shall be filed as long as any bonds, notes or other obligations issued by the authority remain outstanding. Failure of the authority or the state comptroller to notify the county or a covered organization within thirty days (or such additional time, not exceeding thirty days, as the authority or state comptroller shall have notified the county or covered organization that it requires to complete its review) after submission to it of a petition shall be deemed to constitute authority or state comptroller approval thereof.

2. Nothing contained in this title shall limit the right of the county or any covered organization to comply with the provisions of any existing contract within or for the benefit

of the holders of any bonds, notes or other obligations of the county or such covered organization.

3. Nothing contained in this title shall be construed to limit the power of the county or a covered organization to determine, from time to time, within available funds for the county or for such covered organization, the purposes for which expenditures are to be made by the county or such covered organization and the amounts of such expenditures, consistent with the aggregate expenditures then permitted under the financial plan for the county or such covered organization.
4. The authority's fiscal year shall be January first through December thirty-first.

5. The authority shall adopt guidelines for procurement contracts in accordance with section twenty-eight hundred seventy-nine of this chapter.
6. Nothing contained in this title shall alter, limit, modify or impair the right of any school district or any city, town, or village within the county to receive from the county net collections, as authorized by section twelve hundred sixty-two of the tax law, from the county's sales and compensating use taxes imposed pursuant to the authority of subpart B of part one of article twenty-nine of the tax law.
§ 3961. Declaration of need for financing assistance to the county.
 1. The county shall determine and declare whether it requests the authority to undertake a financing of costs for the county or any covered organization. Any such request shall be made by and through the county executive after approval by the legislature. Any such financing shall be consistent with the adopted budget and financial plan of the county required under sections thirty-nine hundred fifty-six and thirty-nine hundred fifty-seven of this title, as applicable.
 2. Upon declaration by the county of such need, the county executive shall request that the authority provide financing in accordance with the provisions of this title.
 3. Upon approval by the authority, in its discretion in accordance with the provisions of this title, of such financing request, the authority may enter into agreements with the county, for itself or on behalf of any covered organization, as applicable, and the county, acting by the county executive, and approved by the legislature, may enter into agreements with the authority in accordance with the provisions of this title as to the financing of costs by the authority, the application of revenues to secure the authority's bonds, notes or other obligations, and further assurances in respect of the authority's receipt of such revenues and the fiscal affairs of the county, including but not limited to the manner of preparation of budget reports and financial plans as provided for in sections thirty-nine hundred fifty-six and thirty-nine hundred fifty-seven of this title, as applicable. The authority's revenues shall not be deemed funds of the county. Any such agreements with the county may be pledged by the authority to secure its bonds, notes or other obligations and may not be modified thereafter except as provided by the terms of the pledge or subsequent agreements with the holders of such obligations.
 4. Such agreements with the county shall: (a) describe the particular financeable costs to be financed in whole or in part by the authority; (b) describe the plan for the financing of the costs; (c) set forth the method by which and by whom and the terms and conditions upon which money provided by the authority shall be disbursed to the county, for itself or on behalf of any covered organization, as applicable; (d) where appropriate, provide for the payment of such costs by the county under such contracts as shall be awarded by the county or for the county to make a capital contribution of such proceeds as county funds to another entity for the payment or reimbursement of such costs; and (e) require every contract entered into by the county, or

another entity receiving funds from the county, for costs to be financed in whole or in part by the authority to be subject to the provisions of the county charter and other applicable laws governing contracts of the county or such entity, as the case may be.

5. At least annually, commencing no more than one year after the date on which authority bonds, notes or other obligations are first issued, the county executive shall report to the authority, the comptroller, the

CHAP. 182

18

legislature, the state comptroller, the chairs of the state senate finance committee and the state assembly ways and means committee, and the director of the budget on the costs financed by the authority and the amount of such financing over the past year, which report shall describe, by reference to the specific items in the county's budget or financial plan, its compliance therewith.

§ 3962. Bonds, notes or other obligations of the authority. 1. The authority shall have the power and is hereby authorized from time to time to issue bonds, notes or other obligations in such principal amounts as it may determine to be necessary pursuant to section thirty-nine hundred sixty-one of this title to pay any financeable costs and to fund reserves to secure such bonds, notes or other obligations, including incidental expenses in connection therewith; provided, however, the aggregate principal amounts of such bonds, notes or other obligations outstanding at any one time shall not exceed seven hundred million dollars, and such bonds shall be exempt as provided in section thirty-nine hundred sixty-nine of this title. Bonds, notes or other obligations issued by the authority (a) to pay reasonable costs of issuance, as determined by the authority, (b) to establish debt service reserve funds, © to refund or advance refund any outstanding bonds or notes of the county or the authority, or (d) as cash flow borrowings shall not count against the above limit on outstanding bonds, notes or other obligations of the authority, nor shall any accretion of principal of bonds that would constitute interest under the Internal Revenue Code of 1986, as amended, count against such limit; provided further, that the aggregate principal amount of cash flow borrowings outstanding at any time shall not exceed two hundred fifty million dollars.

2. The authority may issue bonds, notes or other obligations to refund bonds, notes or other obligations previously issued, but in no event shall the final maturity of any bonds, notes or other obligations of the authority be later than December thirty-first, two thousand thirty-nine. No bond of the authority shall mature more than thirty years from the date of its issue, or after December thirty-first, two thousand thirty-nine, whichever date is earlier.
3. Bonds, notes or other obligations of the authority may be issued, amortized, redeemed and refunded without regard to the provisions of the local finance law.
4. The directors may delegate to the chairperson or other director or officer of the authority the power to set the financial terms of bonds, notes or other obligations.
5. The authority in its sole discretion shall determine that the issuance of its bonds, notes or other obligations is appropriate. Bonds, notes or other obligations shall be authorized by resolution of the authority. Bonds shall bear interest at such fixed or variable rates and shall be in such denominations, be in such form, either coupon or registered, be sold at such public or private sale, be executed in such manner, be denominated in United States currency, be payable in such medium of payment, at such place and be subject to such terms of redemption as the authority may provide in such resolution. No bonds, notes or other obligations of the authority may be sold at private sale unless such sale and the terms thereof have been approved in writing by: (a) the state comptroller where such sale is not

to the state comptroller; or (b) the director of the budget, where such sale is to the state comp-troller.

6. Any resolution or resolutions authorizing bonds, notes or other obligations or any issue of bonds, notes or other obligations may

contain provisions which may be a part of the contract with the holders of the bonds, notes or other obligations thereby authorized as to: (a) pledging all or part of the authority's revenues, together with any other moneys, securities or contracts, to secure the payment of the bonds, notes or other obligations, subject to such agreements with bond-holders as may then exist; (b) the setting aside of reserves and the creation of sinking funds and the regulation and disposition thereof;

(c) limitations on the purposes to which the proceeds from the sale of bonds, notes or other obligations may be applied; (d) limitations on the issuance of additional bonds, notes or other obligations, the terms upon which additional bonds, notes or other obligations may be issued and secured and the refunding of bonds, notes or other obligations; (e) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, including the proportion of bondholders which must consent thereto and the manner in which such consent may be given; (f) vesting in a trustee or trustees such properties, rights, powers and duties in trust as the authority may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to section thirty-nine hundred sixty-three of this title and limiting or abrogating the rights of the bondholders to appoint a trustee under such section or limiting the rights, duties and powers of such trustee; and (g) defining the acts or omissions of the authority to act which may constitute a default in the obligations and duties of the authority to the bondholders and providing for the rights and remedies of the bondholders in the event of such default, including as a matter of right the appointment of a receiver; provided, however, that such acts or omissions of the authority to act which may constitute a default and such rights and remedies shall not be inconsistent with the general laws of the state and other provisions of this title.

7. In addition to the powers conferred upon the authority in this section to secure its bonds, notes or other obligations, the authority shall have power in connection with the issuance of bonds, notes or other obligations to enter into such agreements for the benefit of the bondholders as the authority may deem necessary, convenient or desirable concerning the use or disposition of its revenues or other moneys, including the entrusting, pledging or creation of any other security interest in any such revenues, moneys and the doing of any act, including refraining from doing any act, which the authority would have the right to do in the absence of such agreements. The authority shall have power to enter into amendments of any such agreements within the powers granted to the authority by this title and to perform such agreements. The provisions of any such agreements may be made a part of the contract with the holders of bonds, notes or other obligations of the authority.
8. Notwithstanding any provision of the uniform commercial code to the contrary, any pledge of or other security interest in revenues, moneys, accounts, contract rights, general intangibles or other personal property made or created by the authority shall be valid, binding and perfected from the time when such pledge is made or other security interest attaches without any physical delivery of the collateral or further act, and the lien of any such pledge or other security interest shall be valid, binding and perfected against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof. No

instrument by which such a pledge or security interest is created nor any financing statement need be recorded or filed to be valid and binding.

9. Whether or not the bonds, notes or other obligations of the authority are of such form and character as to be negotiable instruments under the terms of the uniform commercial code, such bonds, notes or other obligations 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 for registration.
10. Neither the directors of the authority nor any person executing bonds, notes or other obligations shall be liable personally thereon or be subject to any personal liability or accountability solely by reason of the issuance thereof. The bonds, notes or other obligations of the authority shall not be a debt of either the state or the county, and neither the state nor the county shall be liable thereon, nor shall they be payable out of any funds other than those of the authority; and such bonds, notes or other obligations shall contain on the face thereof a statement to such effect.
11. The authority, subject to such agreements with bondholders as then may exist, shall have power to purchase bonds, notes or other obligations of the authority out of any moneys available therefor, which shall thereupon be canceled.
§ 3963. Remedies of bondholders. Subject to any resolution or resolutions adopted pursuant to paragraph (f) of subdivision six of section thirty-nine hundred sixty-two of this title: 1. In the event that the authority shall default in the payment of principal of or interest on any issue of bonds, notes or other obligations after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or shall default in any agreement made with the holders of any issue of bonds, notes, or other obligations, the holders of at least twenty-five per centum in aggregate principal amount of the bonds, notes or other obligations of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county 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, notes or other obligations for the purpose provided in this section.
 2. Such trustee may, and upon written request of the holders of at least twenty-five per centum in principal amount of such bonds, notes or other obligations outstanding shall, in his or her or its own name: (a) by action or proceeding in accordance with the civil practice law and rules, enforce all rights of the holders of such bonds, notes or other obligations and require the authority to carry out any other agreements with the holders of such bonds, notes or other obligations and to perform its duties under this title; (b) bring an action or proceeding upon such bonds, notes or other obligations; (c) by action or proceeding, require the authority to account as if it were the trustee of an express trust for the holder of such bonds, notes or other obligations; and (d) by action or proceeding, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds, notes or other obligations.
 3. Such trustee shall, in addition to the provisions of subdivisions one and two of this section, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth in this section or incident to the general representation of holders of bonds, notes or other obligations in the enforcement and protection of their rights.

4. The supreme court of the county shall have jurisdiction of any action or proceeding by the trustee on behalf of such holders of bonds, notes or other obligations.
§ 3964. Intercept of county tax revenues and state aid revenues. 1. Commencing on the effective date of this title, and until December thir-ty-first, two thousand thirty-nine, the state comptroller shall pay county tax revenues at least monthly to the authority in accordance with section twelve hundred sixty-one of the tax law. During such period, the county shall impose sales and compensating use taxes pursuant to the authority of subdivision (a) of section twelve hundred ten of the tax law at a rate of no less than three percent.
2. Commencing on the effective date of this title, and until December thirty-first, two thousand thirty-nine, the state comptroller shall pay state aid revenues to the authority.
3. The county shall have no right, title, or interest in county tax revenues or state aid revenues required to be paid to the authority pursuant to this section.
§ 3965. Resources of the authority. 1. Subject to the provisions of this title, the directors of the authority shall receive, accept, invest, administer, expend and disburse for its corporate purposes all moneys of the authority from whatever source derived including (a) revenues and (b) proceeds of bonds, notes or other obligations.
2. Subject to the provisions of any contract with holders of bonds, notes or other obligations, revenues of the authority shall be paid to the authority and shall not be commingled with any other money.
3. The money in any of the authority's accounts shall be paid out on checks signed by the treasurer of the authority, or by other lawful and appropriate means such as wire or electronic transfer, on requisitions of the chairperson of the authority or of such other officer as the directors shall authorize to make such requisition, or pursuant to a bond resolution or trust indenture.
4. All deposits of authority money shall be secured by obligations of the United States or of the state or of the county at a market value at least equal at all times to the amount of the deposit, and all banks and trust companies are authorized to give such security for such deposits. The authority shall have the power, notwithstanding the provisions of this section, to contract with the holders of any of its bonds, notes or other obligations as to the custody, collection, securing, investment and payment of any money of the authority or any money held in trust or otherwise for the payment of bonds, notes or other obligations or in any way to secure bonds, notes or other obligations, and to carry out any such contract notwithstanding that such contract may be inconsistent with the other provisions of this title. Money held in trust or other-wise for the payment of bonds, notes or other obligations or in any way to secure bonds, notes or other obligations, and deposits of such money, may be secured in the same manner as money of the authority, and all banks and trust companies are authorized to give such security for such deposits.
5. Revenues of the authority shall be applied in the following order of priority: first to pay debt service or for set asides to pay debt service on the authority's bonds, notes, or other obligations and to replenish any reserve funds securing such bonds, notes or other obligations of the authority in accordance with the provision of indenture or bond resolution of the authority; then to pay the authority's operat-ing expenses not otherwise provided for; and then, subject to the authority's agreements with the county for itself or on behalf of any

- covered organization to transfer as frequently as practicable the balance of revenues not required to meet contractual or other obligations of the authority to the county as provided in subdivision seven of this section.
6. (a) Any such payment of state aid revenues to the authority shall not obligate the state to make available, nor entitle the county to receive, any additional state aid.
(b) Nothing contained in this title shall be construed to create a debt of the state within the meaning of any constitutional or statutory provisions. Any provision with respect to state aid or state aid revenues shall be deemed executory only to the extent of moneys available, and no liability shall be incurred by the state beyond the moneys available for that purpose, and any such payment by the comptroller of state aid revenues is subject to annual appropriation of state aid by the state legislature.
(c) Nothing contained in this title shall be deemed to restrict the right of the state to amend, repeal, modify, or otherwise alter section fifty-four of the state finance law or any provision relating to state aid to municipalities. The authority shall include within any resolution, contract, or agreement with holders of its bonds, notes or other obligations a provision which states that no default occurs as a result of the state's exercising its right to amend, repeal, modify, or otherwise alter section fifty-four of the state finance law or any other provision relating to state aid to municipalities.
 7. On a monthly basis, the authority shall prepare and provide to the county a detailed accounting of all revenues received and payments and debt service set asides made, as attributable to the county. Such accounting shall reflect: (a) the amount of state aid revenues and county tax revenues received during such month; (b) the respective portion of debt service paid or set aside during such month by the authority for its bonds, notes or other obligations attributable to the county; (c) the respective portion of reserve fund replenishment made or set aside during such month by the authority in connection with its bonds, notes or other obligations attributable to the county; and (d) the respective portion of administrative expenses of the authority paid or set aside during such month by the authority attributable to the county. As soon as practicable after each monthly payment or set aside, the authority shall make respective payments of the remaining monthly balance of revenues to the county in accordance with such accounting. To the extent that such respective monthly payments of the remaining balance of revenues result in an overpayment or underpayment to the county, the authority shall in the immediately subsequent month, after making debt service payments or debt service set asides, replenishing any reserve funds and paying the administrative expenses of the authority for such month, make an adjustment in favor of the county, as the case may be, before determining the remaining amount of the balance of revenues for such subsequent month and paying such remaining monthly balance of revenues to the county. Nothing in this title shall be deemed to restrict the authority of the state comptroller and the commissioner of taxation and finance to adjust for overpayments or underpayments pursuant to the tax law.
 8. (a) This subdivision shall apply only to revenue anticipation notes, including renewals thereof, issued by the county during its fiscal year ending December thirty-first, two thousand five, in anticipation of the receipt of county tax revenues, and only to such issues of revenue anticipation notes as to which the certificate described in paragraph (b) of this subdivision is filed.

(b) Notwithstanding the provisions of subdivision five of this section with respect to the transfer of the balance of tax revenues to the county, prior to the delivery of each such issue of revenue anticipation notes, the comptroller of the county shall file with the authority a request that the authority establish a county of Erie revenue anticipation note withholding fund which

shall constitute a special bank account for purposes of paragraph g of section 25.00 of the local finance law. Such request by the comptroller shall be accompanied by a certificate setting forth with respect to such issue (i) the principal amount, (ii) the date of issue, (iii) the maturity date, (iv) the inter-est rate or rates, (v) if interest shall be payable otherwise than at maturity, the date or dates for the payment thereof, (vi) the name and address of the paying agent, (vii) the name and address of each purchas-er, or, if a purchaser shall be a syndicate or similar account, the name and address of each managing underwriter of such syndicate or similar account, (viii) the amount payable on each principal payment date and interest payment date, and (ix) a schedule setting forth the total amount of county tax revenues anticipated to be received, and the expected date or dates of anticipated receipt of such county tax reven-ues. Such certificate shall be accompanied by a statement executed by the comptroller certifying that the amounts and times of payments of county tax revenues contained in such schedule have been estimated by the use of reasonable and appropriate data and methods of estimation, all in accordance with applicable law.

- (c) All such revenue anticipation notes, in addition to a pledge of the faith and credit of the county for the payment thereof, shall contain a recital to the effect that they are entitled to the benefits of the provisions of this subdivision.
- (d) Commencing on the date not less than five days prior to and on each day thereafter up to and including any principal and/or interest payment date referred to in the certificate filed by the comptroller with the authority pursuant to paragraph (b) of this subdivision, the authority shall pay to such paying agent from county tax revenues trans-ferred and credited by the authority to the county of Erie revenue anticipation note withholding fund as provided in paragraph (e) of this subdivision the amount required to pay in full the principal and/or interest due on such payment date as set forth in such certificate. Moneys so paid shall pass immediately from the authority and vest in such paying agent in trust for the benefit of the holders of the revenue anticipation notes to which such certificate relates. No other person having any claim of any kind in tort, contract or otherwise against the county shall have any right to or claim against the moneys held by such paying agent, and such moneys shall not be subject to any order, judgment, lien, execution, attachment, setoff or counterclaim by any such other person. Such moneys shall be held by such paying agent in a separate trust account and shall be applied only to the payment of the principal and/or interest due on such revenue anticipation notes, provided, however, that the contract by and between the county and such paying agent may provide for (i) the investment by such paying agent of such moneys in direct obligations of, or in obligations guaranteed by, the United States of America, provided such obligations shall be payable or redeemable at the option of the holder within such time as the proceeds shall be needed to pay such principal and/or interest due on such revenue anticipation notes, and (ii) the use by such paying agent of such moneys for the purchase of direct obligations of, or obligations guaranteed by, the United States of America under one or more repurchase

agreements with any bank or trust company having its principal office in the state of New York, provided that any such repurchase agreement shall provide for the repurchase of such obligations within such time as such moneys are needed to pay the principal and/or interest due on such revenue anticipation notes at a repurchase price at least sufficient to make the amount so invested available for the payment of principal and/or interest due on such revenue anticipation notes, and provided, further, that, at the time of such purchase, the market value

of such obligations shall be at least equal to one hundred two per centum of the amount so invested. No person having any claim of any kind in tort, contract or otherwise against the county shall have any right to or claim against any moneys in anticipation of which such notes have been issued, other than a claim for payment by the holders of such notes, and such moneys shall not be subject to any order, judgment, lien, execution, attachment, setoff or counterclaim by any such person. Notwithstanding any provision of law to the contrary, no instrument relating to any transaction authorized or contemplated by this paragraph need be filed under the provisions of the uniform commercial code.

- (e) Commencing on the day when the authority determines that the principal and interest due or to come due on such outstanding revenue anticipation notes issued against such county tax revenues in accordance with the provisions of this subdivision shall equal the amount of such county tax revenues as set forth on the schedule included in the certificate filed with the authority pursuant to paragraph (b) of this subdivision remaining to be paid to the county on or prior to any principal and/or interest payment date, the authority shall deduct and withhold from the amount of such county tax revenues otherwise payable to the county an amount sufficient to pay, when due, the principal of and interest on all such revenue anticipation notes issued and then outstanding in anticipation thereof. Amounts so deducted and withheld shall be transferred and credited by the authority to the account established for such county tax revenues in the county of Erie revenue anticipation note withholding fund established by the authority in accordance with the comptroller's request pursuant to paragraph (b) of this subdivision. The payments required to be made by the authority pursuant to paragraph (d) of this subdivision shall be made from amounts on deposit in the accounts established for such county tax revenues in the county of Erie revenue anticipation note withholding fund.
- (f) Notwithstanding any other provision of this subdivision, at the expiration of one hundred eighty days after the maturity date of any issue of revenue anticipation notes issued in accordance with the provisions of this subdivision, the amounts held by the paying agent thereof for the payment of the principal of and interest on the notes of such issue which have not been presented for payment shall be paid over and remitted by such paying agent to the county and thereafter the holders of such notes shall look only to the county for such payment.
- (g) All other provisions of the local finance law not inconsistent with the provisions of this subdivision shall continue to apply to the authorization and issuance of revenue anticipation notes by the county.

§ 3966. Agreement with the state. 1. The state does hereby pledge to and agree with the holders of any issue of bonds, notes or other obligations issued by the authority pursuant to this title and secured by such a pledge that the state will not limit, alter or impair the rights hereby vested in the authority to fulfill the terms of any agreements made with such holders pursuant to this title, or in any way impair the rights and remedies of such holders or the security for such bonds,

notes or other obligations, until such bonds, notes or other obligations, together with 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 authority is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds, notes or other obligations. Nothing contained in this title shall be deemed to restrict any right of the state to amend, modify, repeal or otherwise alter: (a) section fifty-four of the state finance law or any other provision relating to state aid, or (b) statutes imposing or relating to taxes or fees, or appropriations relating thereto.

2. The authority shall not include within any resolution, contract or agreement with holders of the bonds, notes or other obligations issued under this title any provision which provides that a default occurs as a result of the state exercising its right to amend, modify, or repeal or otherwise alter: (a) section fifty-four of the state finance law or any other provision relating to state aid; or (b) statutes imposing or relating to taxes, fees, or appropriations relating thereto. Nothing in this title shall be deemed to obligate the state to make any payments or impose any taxes to satisfy the debt service obligations of the authority.

§ 3967. Agreement with the county. 1. The county shall covenant and agree with the holders of any issue of bonds, notes or other obligations issued by the authority pursuant to this title and secured by such covenant and agreement that the county will not limit, alter or impair the rights hereby vested in the authority to fulfill the terms of any agreements made with such holders pursuant to this title, or in any way impair the rights and remedies of such holders or the security for such bonds, notes or other obligations, until such bonds, notes or other obligations, 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 authority is authorized to include this covenant and agreement of the county in any agreement with the holders of such bonds, notes or other obligations. Nothing contained in this title shall be deemed to restrict any right of the county to amend, modify, repeal or otherwise alter any local laws, ordinances or resolutions imposing or relating to taxes or fees, or appropriations relating to such taxes or fees, or setting aside or allocating and applying, paying or using net collections pursuant to the authority of subdivision (a), (c) or (d) of section twelve hundred sixty-two of the tax law, so long as, after giving effect to such amendment, modification or other alteration, the aggregate amount as then projected by the authority of (i) sales and compensating use taxes to be imposed by the county pursuant to the authority of subpart B of part one of article twenty-nine of the tax law; and (ii) all such net collections to be set aside or to be allocated and applied, paid or used by the county pursuant to the authority of section twelve hundred sixty-two of the tax law during each of the authority's fiscal years following the effective date of such amendment, modification or other alteration shall be not less than two hundred percent of maximum annual debt service on authority bonds, notes or other obligations then outstanding. Notwithstanding anything to the contrary in this section, the county further agrees that it shall impose taxes pursuant to the authority of subdivision (a) of section twelve hundred ten of the tax law at the rate of no less than three percent.

2. The authority shall not include within any resolution, contract or agreement with holders of the bonds, notes or other obligations issued under this title any provision which provides that a default occurs as a result of the county exercising its right to amend, modify, repeal or otherwise alter such taxes, fees or appropriations or such net collections. Nothing in this title shall be deemed to obligate the county to make any payments or impose any taxes or set aside or allocate and apply, pay or use net collections pursuant to the authority of section twelve hundred sixty-two of the tax law; except that the county shall impose taxes pursuant to the authority of subdivision (a) of section twelve hundred ten of the tax law at the rate of no less than three percent.

§ 3968. Bonds, notes or other obligations legal for investment and deposit. Bonds, notes or other obligations of the authority are hereby made securities in which all public officers and bodies of the state and all public corporations, municipalities and municipal 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, build-ing and loan associations, investment companies and other persons carry-ing on a banking business, all administrators, conservators, guardians, executors, trustees and other fiduciaries, and all other persons whatso-ever who are now or may hereafter be authorized to invest in bonds, notes or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. Such bonds, notes or other obligations 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 and public corporations for any purpose for which the deposit of bonds, notes or other obligations of the state is now or may hereafter be authorized.

§ 3969. Tax exemption. 1. It is hereby determined that the creation of the authority and the carrying out of its corporate purposes are in all respects for the benefit of the people of the state of New York and are public purposes. Accordingly, the authority shall be regarded as performing an essential governmental function in the exercise of the powers conferred upon it by this title. The authority shall not be required to pay any fees, taxes, special ad valorem levies or assess-ments of any kind, whether state or local, including, but not limited to, fees, taxes, special ad valorem levies or assessments on real prop-erty, franchise taxes, sales taxes or other taxes, upon income or with respect to any property owned by it or under its jurisdiction, control or supervision, or upon the uses thereof, or upon or with respect to its activities or operations in furtherance of the powers conferred upon it by this title, or upon or with respect to any fares, tolls, rentals, rates, charges, fees, revenues or other income received by the authori-ty.

2. Any bonds, notes or other obligations issued pursuant to this title, and the income therefrom, shall be exempt from taxation.

§ 3970. Actions against the authority. 1. Except in an action for wrongful death, no action or proceeding shall be prosecuted or main-tained against the authority for personal injury or damage to real or personal property alleged to have been sustained by reason of the negli-gence or wrongful act of the authority or of any director, officer, agent or employee thereof, unless: (a) it shall appear by and as an allegation in the complaint or moving papers that a notice of claim shall have been made and served upon the authority, within the time

limit prescribed by and in compliance with section fifty-e of the gener-al municipal law; (b) it shall appear by and as an allegation in the complaint or moving papers that at least thirty days have elapsed since the service of such notice and that adjustment or payment thereof has been neglected or refused; and © the action or proceeding shall be commenced within one year after the happening of the event upon which the claim is based. An action against the authority for wrongful death shall be commenced in accordance with the notice of claim and time limi-tation provisions of title eleven of article nine of this chapter.

2. Wherever a notice of claim is served upon the authority, it shall have the right to demand an examination of the claimant relative to the occurrence and extent of the injuries or damages for which claim is made, in accordance with the provisions of section fifty-h of the gener-al municipal law.

3. The authority may require any person presenting for settlement an account or claim for any cause whatever against the authority to be sworn before a director, counsel or an attorney, officer or employee thereof designated for such purpose, concerning such account or claim and when so sworn, to answer orally as to any facts relative to such account or claim. The authority shall have power to settle or adjust any claims in favor of or against the authority.
4. The rate of interest to be paid by the authority upon any judgment for which it is liable, other than a judgment on bonds, notes or other obligations, shall not exceed the maximum rate of interest on judgments and accrued claims against municipal authorities as provided in the general municipal law. Interest on payments of principal or interest on any bonds, notes or other obligations in default shall accrue at the rate specified in the general municipal law until paid or otherwise satisfied.
5. The venue of every action, suit or special proceeding brought against the authority shall be the supreme court in the county.
6. Neither any director of the authority nor any officer, employee, or agent of the authority, while acting within the scope of his or her authority, shall be subject to any liability resulting from exercising or carrying out any of the powers given in this title.
7. (a) The state shall hold harmless and indemnify directors, officers and employees of the authority, all of whom shall be deemed officers and employees of the state for purposes of section seventeen of the public officers law, against any claim, demand, suit, or judgment arising by reason of any act or omission to act by such director, officer, or employee occurring in the discharge of his or her duties and within the scope of his or her service on behalf of the authority including any claim, demand, suit or judgment based on allegations that financial loss was sustained by any person in connection with the acquisition, disposition or holding of securities or other obligations. In the event of any such claim, demand, suit or judgment, a director, officer or employee of the authority shall be held harmless and indemnified, notwithstanding the limitations of subdivision one of section seventeen of the public officers law, unless such individual is found by a final judicial determination not to have acted, in good faith, for a purpose which he or she reasonably believed to be in the best interest of the authority or not to have had reasonable cause to believe that his or her conduct was lawful.
(b) In connection with any such claim, demand, suit, or judgment, any director, officer or employee of the authority shall be entitled to representation by private counsel of his or her choice in any civil

judicial proceeding whenever the attorney general determines based upon his or her investigation and review of the facts and circumstances of the case that representation by the attorney general would be inappropriate. The attorney general shall notify the individual in writing of such determination that the individual is entitled to be represented by private counsel. The attorney general may require, as a condition to payment of the fees and expenses of such representative, that appropriate groups of such individuals be represented by the same counsel. If the individual or groups of individuals are entitled to representation by private counsel under the provisions of this section, the attorney general shall so certify to the state comptroller. Reasonable attorneys' fees and litigation expenses shall be paid by the state to such private counsel from time to time during the pendency of the civil action or proceeding, subject to certification that the individual is entitled to representation under the terms and conditions of this section by the authority, upon the audit and warrant of the state comptroller. The provisions of this subdivision shall be in addition to and shall not supplant any indemnification or

other benefits heretofore or hereafter conferred upon directors, officers, or employees of and repre-sentatives to the authority by section seventeen of the public officers law, by action of the authority or otherwise. The provisions of this subdivision shall inure only to directors, officers and employees of the authority, shall not enlarge or diminish the rights of any other party, and shall not impair, limit or modify the rights and obligations of any insurer under any policy of insurance.

§ 3971. Audits. 1. The accounts of the authority shall be subject to the audit of the comptroller and the state comptroller. In addition, the authority shall be subject to an annual financial audit performed by an independent certified accountant selected by the authority. Such audit report shall be submitted to the county executive, the presiding offi-cer, the comptroller, the governor, the state comptroller, the chair and ranking minority member of the state senate finance committee and the chair and ranking minority member of the state assembly ways and means committee.

2. For each fiscal year during the existence of the authority, and within one hundred twenty days after the close of the county's fiscal year, the county shall submit its audited financial statements to the authority.

§ 3972. Effect of inconsistent provisions. Insofar as the provisions of this title are inconsistent with the provisions of any other act, general or special, or of any charter, local law, ordinance or resol-ution of any municipality, the provisions of this title shall be controlling. Nothing contained in this section shall be held to supple-ment or otherwise expand the powers or duties of the authority otherwise set forth in this title.

§ 3973. Separability; construction. If any clause, sentence, para-graph, section, or part of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered. The provisions of this title shall be liberally construed to assist the effectuation of the public purposes furthered hereby.

§ 4. Subdivision (a) of section 1261 of the tax law, as amended by chapter 86 of the laws of 2004, is amended to read as follows:

- (a) All taxes, penalties and interest imposed by cities, counties or school districts under the authority of section twelve hundred ten, twelve hundred eleven, twelve hundred twelve or twelve hundred twelve-A of this article, which are collected by the commissioner, shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the state comptroller, to the credit of the comptroller, in trust for the cities, counties or school districts imposing the tax or for (i) the Nassau county interim finance authority or (ii) the Buffalo fiscal stability authority or (iii) the Erie county fiscal stability authority, created by the public authori-ties law, (i) to the extent that net collections from taxes imposed by Nassau county are payable to the Nassau county interim finance authority or (ii) to the extent that net collections from taxes imposed by Erie county or by the city of Buffalo are payable to the Buffalo fiscal stability authority or (iii) to the extent that net collections from taxes imposed by Erie county are payable to the Erie county fiscal stability authority, or for any public benefit corporation to which the tax may be payable pursuant to law. Such deposits and deposits received pursuant to subdivision (b) of section twelve hundred fifty-two of this article shall be kept in trust and separate and apart from all other monies in the possession of the comptroller. The comptroller shall require adequate security from all such depositories of such revenue collected by the

commissioner, including the deposits received pursuant to subdivision (b) of section twelve hundred fifty-two of this article. Any amount payable to such authorities pursuant to the public authorities law shall, at the time it is otherwise payable to (i) Nassau county, (ii) Erie county or the city of Buffalo, or (iii) Erie county, respectively, as specified in this section, be paid instead to such respective authority. Any amount payable to a public benefit corporation pursuant to law shall, at the time it is otherwise payable to the taxing jurisdiction as specified in this section, be paid instead to such public benefit corporation.

§ 5. Subdivision © of section 1261 of the tax law, as amended by chapter 86 of the laws of 2004, is amended to read as follows:

- (c) The comptroller, after reserving such refund fund and such costs shall, on or before the twelfth day of each month pay to the appropriate fiscal officers of the foregoing taxing jurisdictions the taxes, penalties and interest imposed by such jurisdictions under the authority of sections twelve hundred ten through twelve hundred twelve-A, collected by the commissioner pursuant to this article during the next preceding calendar month, provided, however, that the comptroller shall on or before the last day of June and December make a partial payment consisting of the collections made during and including the first twenty-five days of said months to said fiscal officers of the foregoing taxing jurisdictions. However, the taxes, penalties and interest from the additional one percent rate which the city of Yonkers is authorized to impose pursuant to section twelve hundred ten, after the comptroller has reserved such refund fund and such cost shall be paid to the special sales and compensating use tax fund for the city of Yonkers established by section ninety-two-f of the state finance law at the times set forth in the preceding sentence. However, the taxes, penalties and interest which (i) the county of Nassau, (ii) the county of Erie, to the extent the county of Erie is contractually or statutorily obligated to allocate and apply or pay net collections to the city of Buffalo and to the extent that such county has set aside net collections for educational purposes attributable to the Buffalo school district, or the city of

Buffalo or (iii) the county of Erie is authorized to impose pursuant to section twelve hundred ten of this article, other than such taxes in the amounts described, respectively, in subdivisions one and two of section one thousand two hundred sixty-two-e of this part, during the period that such section authorizes Nassau county to establish special or local assistance programs thereunder, together with any penalties and interest related thereto, and after the comptroller has reserved such refund fund and such costs, shall, commencing on the next payment date after the effective date of this sentence and of each month thereafter, until such date as (i) the Nassau county interim finance authority shall have no obligations outstanding, or (ii) the Buffalo fiscal stability authority shall cease to exist, or (iii) the Erie county fiscal stability authority shall cease to exist, be paid by the comptroller, respectively, to

- (i) the Nassau county interim finance authority to be applied by the Nassau county interim finance authority, or (ii) to the Buffalo fiscal stability authority to be applied by the Buffalo fiscal stability authority, or (iii) to the Erie county fiscal stability authority to be applied by the Erie county fiscal stability authority, as the case may be, in the following order of priority: first pursuant to the Nassau county interim finance authority's contracts with bondholders or the Buffalo fiscal stability authority's contracts with bondholders or the Erie county fiscal stability authority's contracts with bondholders, respectively, then to pay the Nassau county interim finance authority's operating expenses not otherwise provided

for or the Buffalo fiscal stability authority's operating expenses not otherwise provided for or the Erie county fiscal stability authority's operating expenses not otherwise provided for, respectively, and then (i) pursuant to the Nassau county interim finance authority's agreements with the county of Nassau, which agreements shall require the Nassau county interim finance authority to transfer such taxes, penalties and interest remaining after providing for contractual or other obligations of the Nassau county interim finance authority, and subject to any agreement between such authority and the county of Nassau, to the county of Nassau as frequently as practicable; or (ii) pursuant to the Buffalo fiscal stability authority's agreements with the city of Buffalo, which agreements shall require the Buffalo fiscal stability authority to transfer such taxes, penalties and interest remaining after providing for contractual or other obligations of the Buffalo fiscal stability authority, and subject to any agreement between such authority and the city of Buffalo, to the city of Buffalo or the city of Buffalo school district, as the case may be, as frequently as practicable; or (iii) pursuant to the Erie county fiscal stability authority's agreements with the county of Erie, which agreements shall require the Erie county fiscal stability authority to transfer such taxes, penalties and interest remaining after providing for contractual or other obligations of the Erie county fiscal stability authority, and subject to any agreement between such authority and the county of Erie, to the county of Erie as frequently as practicable.

During the period that the comptroller is required to make payments to the Nassau county interim finance authority described in the previous sentence, the county of Nassau shall have no right, title or interest in or to such taxes, penalties and interest required to be paid to the Nassau county interim finance authority, except as provided in such authority's agreements with the county of Nassau. During the period that the comptroller is required to make payments to the Buffalo fiscal stability authority described in the second previous sentence, the city of Buffalo and such school district shall have no right, title or inter-

31 CHAP. 182

est in or to such taxes, penalties and interest required to be paid to the Buffalo fiscal stability authority, except as provided in such authority's agreements with the city of Buffalo. During the period that the comptroller is required to make payments to the Erie county fiscal stability authority described in the third previous sentence, the county of Erie shall have no right, title or interest in or to such taxes, penalties and interest required to be paid to the Erie county fiscal stability authority, except as provided in such authority's agreements with the county of Erie. The amount so payable shall be certified to the comptroller by the commissioner or the commissioner's delegate, who shall not be held liable for any inaccuracy in such certificate. Provided, however, any such certification may be based on such information as may be available to the commissioner at the time such certificate must be made under this section and may be estimated on the basis of percentages or other indices calculated from distributions for prior periods. Where the amount so paid over to any city, county, school district or the special sales and compensating use tax fund for the city of Yonkers in any such distribution or to such authority is more or less than the amount then due to such city, county, school district or such fund or to such authority, the amount of the overpayment or underpayment shall be certified to the comptroller by the commissioner or the commissioner's delegate, who shall not be held liable for any inaccuracy in such certificate. The amount of the overpayment or underpayment shall be so certified to the comptroller as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the comptroller to such city, county, school district or the special sales and compensating use tax fund for the city of Yonkers or to such authority shall be adjusted by subtracting the amount

of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the comptroller and the commissioner shall consider reasonable in view of the amount of the overpayment or underpayment and all other facts and circumstances.

§ 6. Subdivision (d) of section 1262 of the tax law is amended by adding a new paragraph 3 to read as follows:

(3) Notwithstanding any provision of general, special or local law to the contrary, if at any time from the effective date of the Erie county fiscal stability authority act until December thirty-first, two thousand thirty-nine, any city in the county of Erie imposes sales and compensating use taxes described in section twelve hundred ten of this article, then the county of Erie shall not be required to allocate under paragraph one of this subdivision any net collections from its taxes imposed during such period; instead it shall continue to allocate net collections from its taxes to any city in the county which does not impose such taxes and to the area of the county outside the cities, in accordance with the terms of the most current agreement among such county and the cities in the county entered into pursuant to subdivision © of this section.

§ 7. Subdivision 3 of section 3857 of the public authorities law, as added by chapter 122 of the laws of 2003, is amended to read as follows:

3. The financial plan shall be in such form and shall contain such information for each year during which the financial plan is in effect as the authority may specify, and shall include the city and all the covered organizations, and shall, in such detail as the authority from time to time may prescribe, include (a) statements of all estimated revenues and of all expenditures and cash flow projections of the city

CHAP. 182

32

and each covered organization, and (b) an accounting of the expenditure of efficiency incentive grants available to the city for each year of the plan.

§ 8. The public authorities law is amended by adding a new section 3857-a to read as follows:

§ 3857-a. Efficiency incentive grants. By November tenth, two thousand five, the city shall develop and submit to the authority a plan for achieving recurring savings through innovations and reengineering. Subject to appropriations therefor in the state fiscal years two thousand six—two thousand seven through two thousand ten—two thousand eleven, the authority shall provide grants to support such city cost saving activities. State funding during such five year period shall not exceed fifty million dollars, or ten million dollars annually, for grants provided pursuant to this section and section thirty-nine hundred fifty-seven-a of this article. Provided further, copies of such city plan shall be submitted to the director of the budget, the chair of the state senate finance committee and the chair of the state assembly ways and means committee.

§ 9. Section 1210-D of the tax law, as added by a chapter of the laws of 2005, amending the tax law relating to providing an additional one-quarter of one percent rate of sales and compensating use tax within Erie county, as proposed in legislative bills numbers S.5705 and A.8824, is amended to read as follows:

§ 1210-D. Sales and compensating use [tax] taxes within Erie county. In addition to the taxes imposed by section twelve hundred ten of this subpart or any other provision of [this article] law, the county of Erie is hereby authorized and empowered to adopt and amend [a] local [law, ordinance or resolution] laws, ordinances or resolutions imposing within the territorial limits of such county [an] additional sales and compensating use [tax] taxes at the rate of one-quarter of one percent for the period beginning July first, two thousand five and ending November thir-

tieth, two thousand seven, which [tax] taxes shall be identical to the [tax] taxes imposed by such county pursuant to the authority of section twelve hundred ten of this subpart. Except as hereinafter provided, all provisions of this article, including the definition and exemption provisions and the provisions relating to the administration, collection and distribution by the commissioner, shall apply for purposes of the [tax imposed] taxes authorized by this section in the same manner and with the same force and effect as if the language of this article had been incorporated in full in this section and had expressly referred to the [tax imposed] taxes authorized by this section; provided, however, that any provision relating to a maximum rate shall be calculated with-out reference to the rate of additional sales and compensating use [tax] taxes herein authorized. For purposes of part IV of this article, relating to the disposition of revenues resulting from taxes collected and administered by the commissioner, the additional sales and compensating use [tax herein provided shall be deemed to be] taxes authorized by this section imposed under the authority of section twelve hundred ten of this subpart and all provisions relating to the deposit, administration and disposition of taxes, penalties and interest relating to [a tax] taxes imposed by a county under the authority of section twelve hundred ten of this subpart shall, except as otherwise [specifically] provided in this section, apply to the additional sales and compensating use [tax imposed pursuant to] taxes authorized by this section.

§ 10. If any section, part or provision of this act shall be adjudged unconstitutional or invalid or ineffective by any court of this state,

33 CHAP. 182

any party in interest shall have a direct appeal as of right to the court of appeals of the state of New York, and such appeal shall have preference over all other causes. Service upon the adverse party of a notice of appeal shall stay the effect of the judgment or order appealed from pending the hearing and determination of the appeal.

§ 11. Separability. If any clause, sentence, paragraph, section or part of this act be adjudged by any court of competent jurisdiction to be unconstitutional, invalid, or ineffective, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 12. This act shall take effect immediately; provided, however that section nine of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2005, amending the tax law relating to providing an additional one-quarter of one percent rate of sales and compensating use tax within Erie county as proposed in legislative bills numbers S. 5705 and A.8824, takes effect.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

SPONSORS MEMO:

NEW YORK STATE SENATE

INTRODUCER'S MEMORANDUM IN SUPPORT

submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S5905

SPONSOR: VOLKER

TITLE OF BILL: An act to amend the public authorities law and the tax law, in relation to creating the Erie county fiscal stability authority **PURPOSE:**

This bill would create the Erie County Fiscal Stability Authority (“Authority”), with powers and duties relating to oversight of the fiscal affairs of Erie County. The Authority would have power to issue bonds primarily backed by county sales tax revenues, and would operate on either an “advisory” or “control” level pursuant to the conditions outlined in this chapter.

SUMMARY OF PROVISIONS:

Section 1 would provide the legislative findings.

Section 2 would amend the Public Authorities Law by adding a new Title 3 to Article 10-D of the Public Authorities Law, establishing the Erie County Fiscal Stability Authority. Title 3 would add the following new sections:

§ 3950 Short title.

§ 3950-a would provide the legislative declaration of need for state intervention and calls for a fiscal oversight board to monitor Erie County finances.

§ 3951 would define the key terms used in the new title.

§ 3952 would establish the Erie County Fiscal Stability Authority (Authority) as a public benefit corporation that would meet at least annually during an “advisory” period and quarterly during an active “control” period. The Authority would be in existence until its responsibilities and liabilities have been met, or until December 31, 2039, whichever comes sooner.

§ 3953 would establish membership, service dates, and compensation standards for the Board of Directors and other staff. The Board of Directors would consist of seven members; each appointed by the Governor. One appointee would be recommended by the Temporary President of the Senate, one would be recommended by the State Comptroller, and one would be recommended by the Speaker of the Assembly. The Governor shall appoint four members directly and designate the Chair and the Vice Chair of the Board. One member directly appointed by the Governor and the members appointed on the recommendations of the Senate, Assembly and Comptroller must be residents of Erie County.

§ 3954 would provide the general powers of the Authority including the right to: (i) make by-laws, rules and regulations; (ii) make and execute contracts; (iii) borrow money for county purposes; (iv) issue bonds backed by county sales tax revenues; (v) procure insurance; reinvest funds held in reserves or sinking funds; and (vi) appoint necessary officers and employees.

§ 3955 would provide for the hiring, qualifications and compensation for employees of the Authority and gives the Authority access to resources of other public corporations.

§ 3956 would establish guidelines for Authority review and approval/disapproval of a 2005 budget modification and four-year financial plan. By October 1, 2005, the County Executive must submit a

budget modification and four-year financial plan approved by the County Legislature to the Authority. This submission may also include a declaration of need for up to \$125 million in deficit financing. The Authority has 15 days to approve the budget modification and financial plan.

§ 3957 would establish requirements for submission of a four-year financial plan beginning in the county's 2006 fiscal year. The Authority would approve or disapprove the county's multi-year financial plan according to requirements set forth in this section and suggest necessary modifications to make the plan most suitable for meeting the fiscal needs of the county. The county is responsible for closing increasing portions of the projected gaps without Authority assistance - 10-15 percent in 2005 growing to 80-85 percent in 2009.

§ 3957-a would establish State-funded grants to be awarded to Erie County through the authority to match savings achieved through innovations and reengineering.

§ 3958 would establish an advisory period, effective immediately. During an advisory period, the Authority can: (a) obtain information necessary to carry out its mission; (b) review and make recommendations on the operation, management, efficiency and productivity of the county and any covered organization; (c) consult with the county during the budget-making process; (d) comment on the budget and multi-year financial plan; and (e) comment on proposed borrowings and collective bargaining agreements.

§ 3959 would establish the guidelines for imposing a control period. The Authority would impose a control period if the county: (1) fails to adopt an on-time balanced budget and financial plan; (2) fails to pay debt service; (3) incurs an operating deficit of more than one percent;

(4) loses access to the market for borrowing; or (5) violates provisions of the Act. During a control period, the Authority can: (i) certify revenue estimates; (ii) prescribe financial plan content; (iii) approve/disapprove and modify financial plans; (iv) set spending limits;

(v) impose a wage and/or hiring freeze; (vi) approve contracts and settlements; (vii) review county operations; (viii) audit financial plan compliance; (ix) recommend efficiency and productivity measures; and (x) assess the financial condition and county needs.

§ 3960 would: (a) require Authority and Office of the State Comptroller (OSC) approval before any petitions may be filed under title 6-a of article two of Local Finance Law which governs payment of local obligations and petitions against local governments. This section further provides that no provisions of this chapter can violate existing contracts with bondholders and that no provisions will interfere with existing sales tax sharing agreements; (b) establish the Authority's fiscal year as January 1 to December 31; and (c) direct the Authority to establish procurement guidelines in accordance with this chapter.

§ 3961 would require the county to submit a declaration of need for financing assistance to the Authority before any deficit financing can be undertaken.

§ 3962 would permit the Authority to issue bonds, notes, or other obligations or to refund previously issued bonds, notes or other obligations as needed, and sets a final maturity date of December 31, 2039.

§ 3963 would ensure the remedies of bondholders in the event the Authority fails to pay principal or interest on any debt.

§ 3964 would provide for the interception by OSC of county sales taxes and certain state aid, and for payment of these revenues to the Authority for the entire term of its existence.

§ 3965 would provide for the Authority to receive, invest, and payout its revenues. In addition, a first lien is established on such revenues for bondholders, after which the Authority may finance its own operations and return all remaining excess revenues to the county.

§ 3966 and § 3967 would provide certain protections to bondholders by providing that the state and the county shall not impair the flow of revenues to the Authority or otherwise impair the rights of bondholders.

§ 3968 would provide a list of entities authorized to invest in bonds, notes or other obligations of the Authority.

§ 3969 would provide tax exempt status for the Authority, and direct that its bonds, notes and other obligations are exempt from taxation.

§ 3970 would provide a protection clause in the case of lawsuits and indemnification for directors, officers and employees of the Authority.

§ 3971 would provide audit regulations for the operations of the Authority and for the financial statements of the county.

§ 3972 would establish that this title controls when other provisions of law are found inconsistent.

§ 3973 would establish that provisions of this chapter that are subject to court challenge shall be “liberally interpreted” to assist in the intended public purpose of the Authority.

Section 3 would amend subdivision (a) of § 1261 of the Tax Law to provide that net collections from sales taxes imposed on Erie County are payable to the Authority.

Section 4 would amend subdivision © of §1261 of the Tax Law to provide that payments made from sales tax collections must first satisfy obligations of bondholders followed by payments to cover the Authority’s operating expenses, with the remainder distributed to Erie County for budgetary purposes.

Section 5 would amend the Tax Law by adding a new paragraph 3 to subdivision (d) of § 1262 to provide that any sales or compensating use taxes imposed by any city within Erie County during the tenure of the Authority shall exempt that city from sales tax sharing by Erie County.

Sections 6 and 7 amend the Buffalo Fiscal Stability Authority Act to establish State-funded grants to be awarded to the city of Buffalo to match savings achieved through innovations and reengineering.

Section 8 would make technical amendments to a chapter of the Laws of 2005 that increases the Erie County sales tax by one quarter of one percent.

Section 9 would establish the process for a direct appeal to the Court of Appeals with preference if a provision of this act is determined to be invalid or unconstitutional.

Section 10 would provide a separability clause.

Section 11 provides that this bill would take effect immediately.

Existing Law:

This is new bill.

PRIOR LEGISLATIVE HISTORY:

None.

STATEMENT IN SUPPORT:

A state of fiscal stress exists in Erie County due to a continuing imbalance between county revenues and expenditures that has led to recent downgrades by credit rating agencies, along with a “negative outlook” rating. These downgrades, combined with the absence of an agreement by local officials on a long-term plan for achieving fiscal balance, have raised serious questions concerning county access to the credit market.

The State Comptroller has estimated Erie County’s current year deficit at \$118 million. This deficit increases significantly in the future years. In order to secure current year deficit financing, address

out-year gaps and improve its financial outlook, Erie County needs assistance from the State. The Authority, backed by local sales tax revenue, will provide market access for borrowing that the county may not otherwise be able to secure on its own.

Beginning in an advisory capacity, the Erie County Fiscal Stability Authority will provide oversight throughout the county budget development process and in the preparation of multi-year financial plans. If the county fails to balance its budget and develop approvable financial plans, this bill provides for the immediate imposition of a financial control period during which the Authority will assume a full range of controls over county spending.

For all of the above reasons, it is in the best interest of taxpayers of the State to establish a fiscal oversight authority in Erie County.

State control or oversight authorities have been enacted including, most recently, Chapter 84 of the Laws of 2000 and Chapter 22 of the Laws of 2003, creating the Nassau Interim Finance Authority and the Buffalo Fiscal Stability Authority, respectively.

BUDGET IMPLICATIONS:

Beginning in SFY 2006-07 and continuing through 2010-2011, this bill, subject to annual appropriations, provides for efficiency incentive grants that will encourage efforts by both Erie County and the City of Buffalo to develop innovative approaches for reducing local costs while preserving current service levels. During this five year period, the new grants would total \$50 million or \$10 million annually.