

Opp # 83

APPROVAL # 83

CHAPTER 612

8582-C

# IN SENATE

February 17, 1970

Introduced by Mr. BRYDGES—read twice and ordered printed, and when printed to be committed to the Committee on Finance—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

## AN ACT

Notes—re public authorities law and the tax law in relation to increased availability of residential mortgage establish state of New York mortgage agency, appropriation therefor

Compared by Dambrose Hart

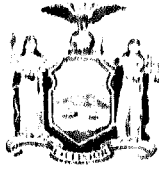
MAY 12 1970

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THE SENATE  
STATE OF NEW YORK  
ALBANY

EARL W. BRYDGES  
TEMPORARY PRESIDENT

S. 8582  
Paul Gilbert

April 16, 1970

Honorable Robert R. Douglass  
Counsel to the Governor  
The Capitol  
Albany, New York

Dear Mr. Douglass:

The Senate and Assembly have now passed S.8582-C and 9208-A (A.I. 6593-A) which are before the Governor for his consideration. There is an additional chapter amendment, S.9383, a copy of which is enclosed.

As you know, this is Senator Brydges' program to create the state of New York mortgage agency. It is explained in the enclosed memorandum in support of the legislation.

For your information, the legislation has been extensively reviewed by Hawkins, Delafield and Wood (Gerard Fernandez, Jr.), who have come to grips with the constitutional issues and are intimately familiar with its bonding provisions. Dick and Merle-Smith (B. B. Ted Thomas, Jr.), who are handling the Battery Park City bond issue, have reviewed the salability of the bonds; it is their opinion that they are salable.

These bills are emergency legislation. See e.g., p. 4, lines 10-15; p. 15, lines 27-28; p. 16, lines 1-20 (S.8582-C); and the floor debate in both houses. We have eliminated, to the greatest extent possible, any benefit to a private undertaking. It is, therefore, our opinion that a court would uphold the validity of the legislation under both the state and federal constitutions.

Honorable Robert R. Douglass

Page 2

April 16, 1970

I have had extensive conferences with the Internal Revenue Service, including a trip to Washington on April 10, 1970. The enclosed chapter amendment embodies their suggestions.

The IRS has taken the position that one-half of one percent is the maximum differential between the agency's bonding rate and the rate of return which the agency or the state or any of its subdivisions may receive, or which the agency may control by the legislation, without violating the arbitrage provisions of the 1969 Tax Reform Act. This would preclude the agency from issuing tax exempt bonds for the purpose of purchasing mortgages, the proceeds of which would be reloaned by the selling banks to corporate borrowers on multiple dwelling mortgages; the spread in such circumstances might approximate three percent.


The IRS makes clear that this is only their current position which is subject to change. It is our hope that ultimately the IRS will agree that such a spread, paid over by the banks to the capital grant low rent assistance fund, does not constitute arbitrage.

In the meantime, bond counsel and the financial consultant agree that, under the statute as drafted, the agency can issue a series of bonds for the purpose of purchasing mortgages, the proceeds from which the selling banks will agree to reloan to individual borrowers. This bond issue will qualify for a revenue ruling that the income is exempt from federal taxation. We have reason to believe that this ruling can be received expeditiously.

The agency can then issue another series of bonds for the purpose of purchasing mortgages, the proceeds from which the selling banks will agree to reloan to corporate borrowers for multiple dwellings. This second bond issue would not be tax exempt; nor would it have to be. Such non-tax exempt bonds should sell, we are informed, for between eight and nine percent. The banks will still be able to put the money out at the going rate.

We urge favorable consideration on these bills.

Yours very truly,



Robert S. Amdursky  
Assistant Counsel to the  
Senate Temporary President

RSA:tr

Enclosures

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M E M O R A N D U M

RE: AN ACT to amend the public authorities law and the tax law in relation to providing increased availability of residential mortgage funds and to establish state of New York mortgage agency, and making an appropriation therefor.

Purpose of the Bill:

To create a state of New York mortgage agency for the purpose of increasing the availability of funds for residential mortgages in the state.

Summary of Provisions of the Bill:

This bill creates the state of New York mortgage agency, a public authority authorized to sell bonds, which should be tax exempt, up to \$750 million. The proceeds of the bonds will be used to purchase mortgages from banks within the state. The purchase price will be computed by discounting the mortgages at the same rate of interest as the agency pays on its bonds. As a condition of the purchase, the selling banks will be obligated to reinvest the proceeds in new mortgages within a time period set by the agency. The new mortgages may be on one- and two-family houses and multiple dwellings. New mortgage loans on multiple dwellings may be made only to corporations, and not more than forty percent of the total funds made available by the agency may be loaned on multiple dwellings. The interest rate payable by individual and corporate borrowers will generally be the same as that on comparable mortgages to such borrowers. However, if the agency pays more than six and one-half percent interest on its bonds, individuals will get the funds at not more than one percent more than the agency pays. The agency should require only a minimal staff. An appropriation of \$400,000 is made to the agency.

To compute the purchase price of a mortgage to be acquired by the agency, its unpaid principal balance is discounted at the same rate of interest as the agency pays on its bonds. Thus, if the agency were to bond at seven and one-half percent, it would purchase a mortgage having an unpaid principal balance of \$10,000, an interest rate of five percent and a remaining term of ten years for \$8,935. The regular five percent interest payments on the acquired mortgage, plus the \$1,165 accretion to principal (the difference between \$10,000 and \$8,935) would result in a yield to the agency of seven and one-half percent on its investment of \$8,935. If the same mortgage yielded seven and one-half percent interest, the agency would pay \$10,000. In no event will the agency pay more than the unpaid principal balance of the mortgage.

The rate of discount set by the bill is mandated by the 1969 Federal Tax Reform Act, which denies federal income tax exemption to state bonds the proceeds

of which are invested in obligations yielding a materially higher rate than the rate of interest paid on the bonds. By setting the discount rate at the same rate at which the agency bonds, interest on the agency's obligations should be exempt from federal income tax. Such a tax exemption is considered necessary to the success of the program.

Consonant with the legislative intent to effect an immediate impact, participating banks will be required to quickly invest the proceeds in new residential mortgages. Commitments for the new mortgages must be made within 30 days after the banks receive the funds; the loans must be consummated within such period as the agency approves.

The rate of interest payable by individuals on the new mortgages will be at the "going rate" for comparable mortgages.<sup>1</sup> However, if the rate at which the agency discounts the mortgages acquired from the bank (which is the same rate which the agency pays on its bonds) exceeds six and one-half percent, the interest rate payable by individuals may be not in excess of the discount rate plus not more than one percent. Thus, if the agency bonds at seven percent, individual borrowers will pay not more than eight percent. A rate in excess of seven and one-half percent will be justified under these circumstances because, if the agency's bonds sell at such a high rate, money from private banking sources will be virtually unavailable. Moreover, the interest rate will still be less than the rate on funds made available by the federal government under its FHA and VA programs.

New mortgage loans to corporate borrowers for multiple dwellings will also bear approximately the usual market rate of interest.<sup>1</sup> In today's market, that rate might be ten to eleven percent. The banks will have received the new money at the agency's bonding rate, e.g., between six and seven percent. In order to prevent the banks from getting a windfall and raising a "gifts and loans" problem under the state constitution, the legislation requires the bank to annually pay into the capital grant low rent assistance fund the difference between the interest it in fact receives on its new mortgages and the interest it would have received if the interest had been computed at the discount rate plus not more than one percent. The capital grant low rent assistance fund subsidizes the rents of low-income families living in middle-income apartments.<sup>2</sup> Thus, the legislation should enable a substantial number of low-income families to occupy units in middle-income apartments.

The inducement to banks to participate in the program is set by the bill at not more than one percent of the discounted unpaid principal balance of the mortgages sold to the agency. This amount must cover the costs of selling all the old mortgages and of making the new ones, as well as inducing the bank to make new mortgage money available.

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<sup>1</sup> To prevent borrowers from receiving a "windfall" and perhaps an unconstitutional gift in the form of "cheap money", banks are required to lend to borrowers at substantially the same rate they are charging on comparable mortgages.

<sup>2</sup> Under the Private Housing Finance Law, up to 20% of a Mitchell-Lama project may be leased by a local housing agency and subleased to low-income families whose rents are subsidized by the capital grant low rent assistance fund.

The agency is designed to require only a minimal staff. It is expected that it will acquire fairly large blocks of mortgages covered by comprehensive warranties by the selling banks. Therefore, no detailed examination of the individual mortgage, mortgagor or security is either necessary or envisioned. Mortgages acquired by the agency will continue to be serviced by the selling banks which will receive a credit against their franchise tax equal to the value of the services rendered. Mortgagors whose mortgages have been transferred will not be affected in any way; indeed they will not be aware of the transfer.

Statement in Support of the Bill:

Privately financed construction of one- and two-family residences and privately developed multiple dwellings has come to a virtual standstill in New York. The absence of new housing starts, coupled with the inadequate supply of existing units, has substantially increased the pressure on the already overtaxed housing market. Housing is in extremely short supply; the price of those units which are available has been driven upward by the seller's market. In addition, there has been relatively little turnover of existing units. This lack of new construction and of movement within the housing market is threatening to have serious consequences, not only on the construction industry, but on the State's economy generally.

One major cause of this housing freeze has been the unavailability of private financing. This condition, in turn, results from the fact that banks lack currently available funds to invest in mortgages. To meet this rapidly developing crisis, the new agency is designed to free up to \$750 million of banks' funds for new residential mortgages.

It is the legislative intent that the new agency will be established, operating and issuing its bonds as quickly as possible. It is expected that by Spring 1970 it will be purchasing existing mortgages from banks within the state.

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STATE OF NEW YORK  
DEPARTMENT OF LAW  
ALBANY 12224

LOUIS J. LEFKOWITZ  
ATTORNEY GENERAL

MEMORANDUM FOR THE GOVERNOR

Re: Senate 8582-C ✓  
Senate 9208-A

The purpose of these bills is to pump additional mortgage money into the market in order to stimulate new residential construction in the State. The bills are to take effect immediately.

Senate 9208-A merely makes a few incidental changes in Senate 8582-C. Both bills should be considered together.

The bills create a new corporate governmental agency of the State to be known as the State of New York Mortgage Agency. Succinctly stated, its primary function will be to purchase from banks existing mortgages on residential New York real estate upon the agreement of the banks to reinvest the proceeds of such sales in new mortgages on residential New York real estate. The banks which sell mortgages to the Agency shall continue to service the mortgages so sold.

I believe that it would have much better served the stated legislative purpose if a bank selling a mortgage to the Agency were required not only to reinvest the proceeds of the sale in new mortgages on New York residential real estate, but to invest an additional equivalent sum in such new mortgages from other bank funds. This would double the amount of money being pumped into the new mortgage market by reason of the Agency's operations. This, however, can await action at the next session of the Legislature. I would not delay operation of the Agency on this account.

I find no legal objection to these bills.

Dated: May 7, 1970

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Respectfully submitted,

*Louis J. Lefkowitz*  
LOUIS J. LEFKOWITZ  
Attorney General

*Chap. 611-2 612*

*File 5852-C*

New York State  
Urban Development Corporation

608 Fifth Avenue, New York, New York 10019/(212) 501-0220

MEMORANDUM

XXXXXXXXXXXX  
XXXXXXXXXXXX

April 2, 1970

To: Robert R. Douglass  
From: Stephen Lefkowitz  
Re: SUNNY MAY - State of New York Mortgage Agency Act; Senate 8582-C

The following are the points which I think should be noted in connection with the above bill:

1. The bill provides that the three directors to be appointed by the Governor must be appointed within 10 days of the effective date of the bill. The bill has an immediate effective date.
2. Mortgages to multiple dwellings are limited to 40% of all new mortgages which can be made by banks from the proceeds of the sale of their old mortgages to the agency. This is apparently required for Assembly passage.
3. Under some circumstances, i.e. when the interest rate paid on bonds of the agency exceed 6 1/2%, banks are permitted to make new mortgage loans at an interest rate in excess of 7 1/2%.
4. The bill as written contains a State "make-up" on the agency's debt service reserve fund. In every other case that I know of, the State's obligation is limited to appropriations sufficient to cover the following year's debt service on agency bonds. This bill, however, would permit the agency, in its own discretion, to fix the amount of State make-up which it requires, not limited to the following year's debt service on the bonds. I have pointed this out to Thorne Edwards and I believe that he will change it.
5. The bill would require a State make-up to the extent of the following year's debt service on the bonds, even if no debt service reserve fund had been created by the agency.

*I don't think we should do this*

*Thorne must change*



April 2, 1970

Thorne believes this is necessary to provide security for the bonds without the need for the agency to set aside a portion of the proceeds of any bond sale for a debt service reserve fund, which, he asserts, would be a wasteful diversion of bond proceeds.

*Thorne is considering open*

6. The bill now would permit the agency to make up its own operating budget, without review by anyone, and would require the legislature to appropriate sufficient funds to meet this budget. I have asked Thorne to take this provision out. He is checking with bond counsel to determine whether they feel it is important.

*no problem*

7. The bill permits the agency, in effect, to be its own paying agent, without the need to use the State Commissioner of Taxation and Finance. This is unusual, but Thorne believes it is necessary.

8. There is no doubt that the banks get substantial benefits under this bill. They may receive up to 1% per annum as consideration for their participation in the program. They receive a tax credit computed as a percentage of the principal balance of mortgages which they have sold to the agency and which they service for the agency. In addition, while requiring the banks to pay over to the HFA (for its low rent lease account) the difference between what they receive in interest on new mortgages and what they would have received if the interest on such mortgages had been at a discounted rate, plus the additional consideration allowed to the banks, such payments to the HFA must be made only annually. This, in effect, gives them the use of this money for some period of time, i.e. what the bankers call a "float". I have discussed all of these things with Thorne, he believes these various incentives and inducements are necessary to encourage banks to participate in the program.

I remain extremely apprehensive over the practical workability of this program. More than anything I am doubtful that it can be set up and operating within the very short period of time that Thorne believes possible and necessary. In particular, I question whether necessary IRS rulings, details of mortgage purchase program, bond resolutions and bond marketing program can be done in anything less than 6 to 8 months. More likely, it can take closer to a year.

For this reason, I suggested to Michael Whiteman that consideration be given to funding the agency with sufficient State funds to enable it to begin a mortgage purchase program without waiting for IRS rulings and bond resolutions.

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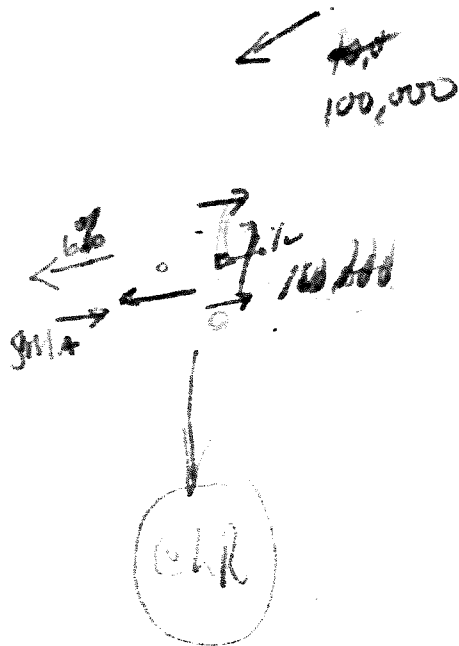
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April 2, 1970

My last recommendation is that if and when the bill is passed and signed, Thorne Edwards be appointed the chairman of the agency. He understands the bill and concept better than anyone else. He seems convinced that it can be made to work. He is a good lawyer who is quite knowledgeable about banking. He has more enthusiasm for the idea than anyone else you are likely to find.

*SL*  
S. L.

SL:dc  
cc: Michael Whiteman  
    /Lewis Stone



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STATE OF NEW YORK  
INSURANCE DEPARTMENT  
123 WILLIAM STREET  
NEW YORK 10038

RICHARD E. STEWART  
SUPERINTENDENT OF INSURANCE

MEMORANDUM TO THE GOVERNOR

RE

TWO BILLS

AN ACT TO AMEND THE PUBLIC AUTHORITIES LAW AND THE TAX LAW IN  
RELATION TO PROVIDING INCREASED AVAILABILITY OF RESIDENTIAL  
MORTGAGE FUNDS AND TO ESTABLISH STATE OF NEW YORK MORTGAGE AGENCY,  
AND MAKING AN APPROPRIATION THEREFOR

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INSURANCE DEPARTMENT

Senate  
8582-C

Introduced by:  
Mr. Brydges

RECOMMENDATION: Approval

STATUTES INVOLVED: Public Authority and Tax Laws

EFFECTIVE DATE: Immediately

AN ACT TO AMEND THE PUBLIC AUTHORITIES LAW, IN RELATION TO THE  
FUNCTIONS, POWERS AND DUTIES OF THE STATE OF NEW YORK MORTGAGE AGENCY

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INSURANCE DEPARTMENT

Senate  
9208-A

Introduced by:  
Rules Committee request  
of Mr. Brydges

RECOMMENDATION: Approval

STATUTES INVOLVED: Public Authorities Law

EFFECTIVE DATE: Immediately

DISCUSSION:

These are a Governor's Program Bill and the chapter amendment thereto. The legislation is designed to increase the availability of funds for the construction of residential housing. This objective is accomplished by the creation of a public benefit corporation (Public Authorities law, new Title 17, Section 2403), the New York Mortgage Agency ("the Agency") which is authorized and empowered to purchase mortgages held by banks which are legal

investments for such banks. Funds received by the banks from the Agency must be reinvested in residential property. (Section 2405 (1) and (7)). Mortgages will continue to be serviced by the banking institutions after they are acquired by the Agency (Bill Section 2 - Statement of Legislative Purpose). The agency is not required to record an assignment of any mortgage purchased by it from a bank (Section 2405 (9)) and administrative detail is minimized. New Section 2410 provides that neither the State nor any municipalities shall be liable on bonds, notes or other obligations of the Agency. Obligations of the Agency are not specifically secured by any of the mortgages but are general obligations of the Agency (Section 2406 (2)). This Department's basic interest is limited to Section 2414 (Bill pages 29-30) which provides that bonds and notes of the Agency shall be legal investments for monied corporations, including insurance companies, as well as governmental units.

There is no requirement in the bill that insurers invest any portion of their assets in the Agency's obligations. The bill has a most desirable social purpose, increasing the availability of residential mortgage funds. Some insurers may wish to avail themselves of this investment opportunity. It should be noted that the life insurance industry voluntarily allocated \$1 billion of funds within the past year to help meet the shortage of funds for building construction.

From this Department's standpoint the objectives of the measures are salutary and we recommend their approval.

Respectfully submitted,

RICHARD E. STEWART  
Superintendent of Insurance

By: 

Theodore R. Ayervais  
Deputy Superintendent and General Counsel

May 6, 1970

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S-8582c

**Memorandum**



STATE OF NEW YORK  
Council of Economic Advisers

May 11, 1970

TO: Robert Douglass, Counsel to the Governor  
FROM: John Morgan, Council of Economic Advisers  
SUBJECT: Council Views on Senate Bills 9208A, 8384, 8582C,  
and 9383A

A Council response to your request for comments on the above legislation has been delayed because your request was just now received. In the future, such requests should be directed to the Executive Director of the Council who would undertake to reply on behalf of the Chairman and the other Council members. In this instance, your request was sent directly to Chairman Black.

Since the bills under review have either been signed or are about to be signed, the Council will not comment separately at this point, but will join its views with those of the State Superintendent of Banks who expects to submit a statement to you.

JTM:ih  
cc: William T. Dentzer, Jr.

THIRTY-DAY BILL  
BUDGET REPORT ON BILLS

*Chap 612*

Session Year: 19 70

SENATE

Introduced by:  
Senator Brydges

ASSEMBLY

No. 8582-C, 9208-A and 9383-A

No.

Law: Public Authorities  
Tax

Sections: Title 17 (new)  
190 (new)

Division of the Budget recommendation on the above bill:

Approve: \_\_\_\_\_ Veto: X No Objection: \_\_\_\_\_ No Recommendation: \_\_\_\_\_

1. Subject and Purpose: To increase the availability of mortgage funds for New York State residents by creating the State of New York Mortgage Agency (nicknamed "Sammy Mae") which would be authorized to issue tax-exempt obligations (the total amount outstanding at any given time not to exceed \$750 million) for the purpose of purchasing existing in-State residential mortgages from in-State financial institutions to free funds for lending on new in-State residential mortgages by these institutions.
2. Summary of provisions of bill: (NOTE: This memorandum describes the final version of the State of New York Mortgage Agency Act, S.8582-C, as it would be amended by Senate bills 9208-A and 9383-A, two other 30-day bills.)

The bill, which would take effect immediately, would:

(a) Add a new Title 17 (sections 2400-2423) to Article 8 of the Public Authorities Law to create the State of New York Mortgage Agency, for the express purpose of purchasing mortgages from financial institutions to increase the availability of mortgage funds for residential housing in New York State.

The Agency would:

- (1) Have a membership composed of the Superintendent of Banks, the State Comptroller (or a member appointed by the Comptroller), and three other directors appointed by the Governor subject to confirmation by the Senate (page 5, line 20 through page 7, line 20).
- (2) Be authorized to issue bonds and notes (the total amount outstanding at any given time not to exceed \$750 million) for the purpose of purchasing existing mortgages from in-State banks (page 22). These bonds and notes would be secured by the full faith and credit of the Agency (page 17), but the bill provides for a State "moral guarantee" of such obligations (pages 24-25, 28).
- (3) Have the power to enter into contracts with in-State banks to purchase existing mortgages (until December 31, 1974) at a price equivalent to the unpaid principal balance of the mortgage, discounted to maturity at a rate that will yield to the Agency the average net interest cost per annum

Date \_\_\_\_\_ Examiner: \_\_\_\_\_

Disposition: \_\_\_\_\_ Chapter No. I 11 Veto No. \_\_\_\_\_

of its bonds issued for the purpose of financing such purchases, expressed as a percentage, plus such percentage (not to exceed one-half of one per cent) as the Agency may determine (the aggregate of which is referred to as the "discount rate"). The extra one-half per cent presumably would finance the operations of the Agency. The Agency could not pay more for any mortgage than the unpaid principal balance of the mortgage (page 11, line 17 through page 12, line 2).

- (4) Be authorized to contract with such banks to service the respective mortgages that they have sold to the Agency, i.e., continue to collect the principal, interest and escrow payments from the mortgagor (p.10, lines 1-4; also see p.15, lines 20-26 and the "statement of legislative purpose," p.34, lines 16-22).
- (5) Be required to submit to the Governor and the Director of the Budget, a certificate stating the amount estimated to be required for maintenance of debt service reserves and operating expenses for the next twelve months. The funds for these estimated expenditures would be recommended, for appropriation in the Executive Budget, and be paid over to the Agency after audit by, and on the warrant of, the Comptroller (page 24, line 12 through page 26, line 10).
- (6) Have the authority to discontinue the purchase of mortgages from banking institutions in the event that the Agency determines that adequate mortgage funds are available in regular banking channels (page 16, line 3-15). Any unused bond funds could be invested only in obligations guaranteed by the State or by the United States (pages 8, 18-19, 23).
- (7) Be permitted to foreclose, acquire or take possession of any property in case of default on any mortgage purchased by the Agency and be permitted to dispose of the property in a manner which would protect the interests of the Agency and the holders of its bonds and notes (page 10, lines 5-14).
- (8) Have the authority to enter into agreements with any municipality to pay annual sums, in lieu of taxes, on foreclosed property held by the Agency, the only stipulation being that the annual payment cannot exceed the amount of taxes last paid on the property (page 10, lines 21-28).

The financial institutions that sell mortgages to the Agency would:

- (1) Be required to enter into written commitments to utilize such funds for new in-State mortgage loans within 30 days after the sale of the mortgages to the Agency (page 12, lines 3-5). The bill requires that the borrower for multiple dwelling units be a corporation (page 12, lines 9ff). Any commitments to lend for a



multiple dwelling must be approved by the Agency and the Agency may refuse to approve any commitments to lend for a multiple dwelling if required by the terms of any bonding resolution; moreover, mortgage commitments for multiple dwelling units may not exceed 40 per cent of the purchase price of all mortgages purchased by the Agency (page 12, lines 9ff).

The bill does not, however, provide a definition of multiple dwelling, which definition will presumably be determined administratively by the Agency. (See drafting note a). The definition should exclude at least up to three-family owner-occupied dwellings so that such buildings in New York City and other large cities in the State are not precluded from the full benefits of this bill.

- (2) Be required to loan all funds received from the Agency (through the sale of mortgages) for new residential mortgage loans on property located in the State. Mortgage loans on one- and two-family residences must be made at a rate of interest equal to the "discount rate" plus an interest differential of up to one per cent as determined by the Agency to be necessary to induce banks to sell mortgages to the Agency (page 12, lines 10-27). Corporate mortgages must bear interest "at a rate not substantially lower" than the rate of interest charged on comparable corporate mortgages (page 12, line 27 through page 13, line 3). In the case of such corporate mortgages, it would appear, therefore, that the financial institutions would be required to return to the Agency, the difference between the interest received from the new corporate mortgages and the interest that these mortgage loans would have yielded if contracted for at the discount rate plus the interest differential. These funds would be deposited in the existing low-rent lease account administered by the New York State Housing Finance Agency (page 13, lines 3-13).
- (3) Be required to warrant to the Agency that: (i) the unpaid principal balance of the mortgage is due and owing; (ii) the mortgage constitutes a valid first lien against the property mortgaged; (iii) the mortgagor is not in default in the payment of any installment of principal, interest or escrow funds; and (iv) several other conditions assuring the validity and security of the mortgages (page 14, line 5 through page 15, line 11). The financial institutions would not be required to guarantee the principal and interest (yield in case of default) on the mortgages sold to the Agency.

(b) Add a new section 190 to the Tax Law to provide a tax credit for financial institutions servicing mortgages for the Agency. The financial institutions could credit against their bank tax liability:

- (1) an amount equal to one-quarter of one per cent of the total average unpaid principal balance of all mortgages on residential one- and two-family structures serviced by the financial institution (page 35, lines 4-8); and

- (2) an amount equal to one-tenth of one per cent of the unpaid principal balance of all mortgages on multiple dwelling units serviced by the financial institution (page 35, line 9-12).

(c) Make a regular (not first-instance) appropriation of \$400,000 to the Agency for personal service and other expenses of the Agency (page 35, lines 21-27).

3. Prior legislative history: None. However, there are two other thirty-day bills before the Governor which are aimed at increasing the funds available for investment in in-State residential mortgages. S.9191 would, if approved, allow the Commissioner of Taxation and Finance to invest up to one-third of the net value of the New York State Liability and Security Fund in mortgages for one-, two-, three- and four-family, owner-occupied residences. The Fund has assets in excess of \$150 million, and, thus, this bill could free approximately \$50 million for investment in residential mortgages.

S.9187-A would require that New York State savings banks invest, in in-State residential mortgages, a minimum percentage of their average weekly balance of total assets. This bill would require savings banks to invest according to the following percentage schedule; 1970-one per cent; 1971 - two per cent; 1972 - three per cent; 1973 - four per cent; and 1974 (and thereafter) - five per cent. It has been estimated that this bill would free an additional \$88 million for residential mortgages in 1970 and approximately \$165 million in 1971.

Several other measures that would increase funds available for residential mortgages have been taken or are being considered. At the Governor's request, savings banks have agreed to create a new \$40 million pool of funds for investment in residential mortgages. In addition, the savings banks are also releasing \$18.5 million in funds from a mortgage fund pool created several years ago.

At the Governor's request, the Superintendent of Banks and the Comptroller's Office are investigating the feasibility of using employee pension funds for investment in residential mortgages. This proposal, which would require legislative approval at the 1971 session, could free an undetermined amount of money for investment in residential mortgages.

Another pertinent aspect of the legislative history surrounding the residential mortgage market is the present interest ceiling under section 14-a of the Banking Law. This ceiling, which had long been set at six per cent, was temporarily raised in 1968 (until September 1, 1971) to seven and one-half per cent for conventional residential mortgages. At the same time, FHA- and VA- insured mortgages were made exempt from the ceiling. While these actions were taken for the explicit purpose of encouraging expanded investment in residential mortgages, they have achieved only limited success due to continuing tight money and the demand for funds to finance competing investments, including conventional mortgage loans in other states that are less restrictive with regard to interest that may be charged. Unless further action is taken at the 1971 legislative session, the interest rate ceiling on conventional residential mortgage loans will automatically revert to six per cent on September 1, 1971.

4. Arguments in support of bill:

(a) The State of New York Mortgage Agency would be a vehicle for providing mortgage money for residential housing located in New York State. Construction starts of privately-financed one- and two-family residences and privately-developed multiple dwellings have been retarded in New York, as well as in other states in the Nation due to the monetary restrictions imposed by the Federal Reserve System, which have significantly reduced funds in financial institutions that are available for residential mortgages. Moreover, a significant proportion of the funds which financial institutions have available for mortgage lending are being directed into out-of-State mortgages rather than into in-State mortgages simply because these out-of-State mortgages provide a higher rate of return than in-State mortgages (the maximum interest rate that can be charged on residential mortgages in New York State, excluding F.H.A., V.A. and corporate mortgages, is 7-1/2 per cent, whereas numerous other states allow banks to charge higher mortgage interest rates). Residents of New York State are vitally in need of more residential mortgage funds in order to purchase or build dwelling places for themselves and their families. This bill would free up to \$750 million of bank funds, through the purchase of outstanding mortgages by the State of New York Mortgage Agency, which would be required to be reinvested in in-State mortgages for one- or two-family units or multiple dwelling units within 30 days after receipt.

(b) Enactment of this proposal would provide employment for under-employed and unemployed building contractors. The current monetary crunch, which has retarded housing starts in New York as well as throughout the nation, has also resulted in under-employment and unemployment for many employees in the construction industry. With new mortgage money available, housing starts would undoubtedly increase, thus providing increased employment opportunities for residential construction workers.

(c) While there is evidence that the Federal government is relaxing its grip on the money supply (i.e., the prime interest rate has recently been reduced by some of the larger financial institutions), it does not appear that this will be done rapidly enough to spur the State's construction economy to the point necessary to supply housing for a substantial number of the State's residents. The funds that would be made available through this legislation will enhance New York's economic climate by increasing residential housing and employment opportunities and will help to provide sufficient housing.

5. Possible objections to bill:

(a) The possibility of the Agency engaging in a timely bond sale is remote, mainly due to the uncertainty of the tax-exempt status of the bonds. Under the Tax Reform Act of 1969, bonds sold by states or their political subdivisions for the sole purpose of reinvesting the proceeds in higher yield securities or activities are no longer tax exempt (deemed arbitrage bonds). In other words, if the Agency were to realize a profit (over and above administrative expenses) from the purchase of outstanding mortgages, the bonds of the Agency would not be tax exempt. While the wording of the bill would appear to preclude any possibility that the Agency would make a profit on the

purchase of mortgages over and above an amount necessary to meet its necessary administrative expenses, the possibility still exists that the bonds might not be ruled to be tax exempt. This uncertainty would undoubtedly render the bonds unmarketable until the Internal Revenue Service issued a ruling on the taxable status of the bonds, which could take considerable time.

It should be noted here that the Urban Development Corporation, a public corporation created in 1968, has yet to receive an IRS ruling as to the taxable status of its bonds. Although it is intended that the Agency is to provide the mortgage market with additional moneys almost immediately, it is virtually certain that this objective can not be attained since, in all probability, the Agency will not be able to market its bonds in a timely fashion.

(b) There is no provision in the bill that will insure that overall mortgage lending effort, in New York State will increase beyond the amount currently available to the mortgage market. There should unquestionably be a provision in the proposal to require those banks that sell mortgages to the Agency to invest in residential mortgages a portion of their funds comparable to what was being loaned before "Sammy Mae" funds became available (maintenance of mortgage lending effort provision). Without a provision such as this, banks could conceivably curtail lending of their own funds for in-State residential mortgages and use, instead, "Sammy Mae" funds, thus, still achieving the same in-State residential mortgage portfolio but lending a considerably greater amount of funds outside the State.

In addition, this proposal could allow banks to meet, with "Sammy Mae" funds, the in-State percentage investment requirements that would be imposed by S. 9187-A, another 30-day bill currently before the Governor. (See prior legislative history above.)

(c) As notes generally sell at a lower rate of interest than bonds, the Agency could end up receiving less than is necessary to pay the debt service on the bonds sold. The Agency, after selling its notes, would be forced into issuing its bonds when the notes expire (7 years after date of issue) regardless of the prevailing interest rates on bonds at that time. If, however, the Agency has already used the cost of the notes to "discount" the mortgages purchased from the banking institutions, and the bonds carry a higher cost, the return to the Agency from the mortgages would not be sufficient to cover the debt service on the bonds. In this instance, the State would be "morally obligated" to subsidize the Agency's "debt service reserve funds" annually.

(d) The tax relief provisions in this bill are unwarranted and unwise. Even if one were to accept the bill sponsor's apparent assumption that some form of financial remuneration is necessary to induce banks to service mortgages sold by them to the State Mortgage Agency, the tax credit approach should be avoided in view of the availability of sounder, more direct methods of reaching the desired goal, e.g., the payment of a fixed or negotiated service fee. Such a straightforward approach would seem to be logical if some remuneration were, in fact, justified, particularly since the tax credit provisions seem to introduce unduly complex administrative ramifications. Upon closer examination, however, the purported rationale for the tax credits appears to be nothing more than a cloak to conceal the fact that an

unwarranted subsidy would be provided to participating banks.

Under this bill, a bank would presumably sell a mortgage to the State Agency only if it could invest the proceeds from the sale in a higher-yielding new mortgage instrument. Its gain on this transaction should be more than sufficient to offset its cost of servicing mortgages sold to the Agency, particularly since it will retain the use of the escrow funds on these mortgages. [NOTE: The principle would be clearer if the bank were to use the mortgage as collateral for a loan from the State Agency, in which case the bank would automatically continue to service the mortgage; moreover, under such an arrangement, the bank would retain liability for any default by the mortgagor, rather than shift this potential liability to the State Agency.]

The tax credit device provided for in the bill would involve the State in a long-term, continuing revenue loss and it would entail very complex recordkeeping and administration. Presumably, in order to comply with this provision, the Department of Taxation and Finance would have to receive periodic (at least annual) certifications from the State Mortgage Agency. The Agency, in turn, would have to maintain separate detailed records on the aggregate average principal balance of all mortgages held by each bank on: (a) one-family and two-family residential structures; (b) multiple dwellings. The bill makes no mention of reporting requirements.

While it might be argued that the mortgage servicing tax credit will be taken into consideration in setting the "interest differential", as deemed necessary by the Agency to induce bank participation (limited to a maximum of one per cent on page 12 of the bill), between the Agency's interest cost (including provision for administrative expenses) and the maximum interest rate that banks may charge on new residential mortgages, the interaction between the tax credit and the interest rate determinations could create a conflict between the best interests of the Agency and those of the State. [NOTE: Although the Agency is established as an independent creature of the State under the "guise" of a self-liquidating operation, it would receive direct State assistance in the form of appropriations for operating expenses and, probably, a debt service reserve and indirectly through the tax credit mechanism.]

The tax credit features of this bill, when considered together with other features of this bill, will undoubtedly lead to characterizations of the bill as a "give-away" to the banking community. As noted above, the banks will retain use of the escrow accounts at the same time they receive tax relief for servicing mortgages that they have sold to the Agency. Moreover, a bank could, at least theoretically, purchase the tax-exempt obligations of the Agency (such obligations are made legal investments for various classes of investors, including banks, on pages 29-30 of the bill) which are used to finance Agency purchase of such bank's low-yielding mortgages, thus engaging in the type of circular, self-dealing arrangement that lead to Federal restrictions on the tax-exempt status of industrial revenue bonds (in a celebrated Southern case, a municipality issued bonds to construct a factory; the manufacturing firm that leased the factory bought all of the industrial revenue bonds issued to finance it).

Finally, the bill provides (p. 30) that

"All moneys of the agency from whatever source derived, except as otherwise authorized or provided in this act, shall be paid to the treasurer of the agency and shall be deposited forthwith in a bank or banks in the state designated by the agency..." (emphasis supplied)

There is no requirement in the bill that any of these funds be deposited in interest-bearing accounts, thereby enabling the Agency to find yet another way to provide covert financial assistance to banking institutions.

(e) The concept of the proposed State of New York Mortgage Agency ("Sammy Mae") has been compared to the concept of the Federal Home Mortgage Agency ("Fanny Mae"), a comparison which is not entirely valid. There is a similarity in that both agencies would induce a flow of money into the mortgage market. However, the two agencies differ drastically in two other very important aspects.

First, "Fanny Mae" insures the payment of principal and interest on mortgaged property in the event of default by the mortgagee. "Sammy Mae," on the other hand, would operate by the outright purchase of existing mortgages, a considerably different concept.

Secondly, and perhaps more importantly, the main objectives of the two agencies are different. The main thrust of "Fanny Mae" is to provide home mortgages for lower or lower-middle income citizens who, regardless of prevailing interest levels or the supply of mortgage money, would, in all probability, be unable to obtain approval of a mortgage with acceptable terms. "Sammy Mae," on the other hand, would probably increase the availability of mortgages for middle-income one- or two-family homes or multiple dwellings.

(f) The Governor's Interdepartmental Committee on Mortgage Incentives (with representation from Governor's Counsel, the Division of the Budget, the Banking Department, the Housing Finance Agency, and the State Council of Economic Advisers) recommended that "the Governor authorize the Committee to meet with Senator Brydges' staff in an attempt to dissuade them from passing the bill...." This unanimous decision would appear to indicate that the bill was not considered an acceptable method of improving the availability of mortgage funding.

(g) The banks that will sell mortgages to "Sammy Mae" are not required to guarantee the yield from the mortgages in case of default. There are no provisions in the bill that would ensure that the banks will sell "good" mortgages to the Agency and, thus, the Agency would have to withstand any default on "bad" mortgages. Such defaults have been increasing.

(h) There are no provisions in the bill requiring public sale of property which is foreclosed by the Agency. While the bill provides that mortgages must be sold at public auction (page 9, lines 9-13), the foreclosed property may be sold through a private sale. This seems rather inconsistent with the safeguards normally associated with the sale of foreclosed or repossessed property.

(i) There appears to be a technical flaw in the bill. The bill (section 2405 (4)) requires that every bank making loans from Agency funds pay over to the low rent lease account of the New York State Housing Finance Agency, an amount equal to "... the difference between (a) the total amount of interest (which shall include all charges to individual and corporate borrowers that would be treated as interest under section 5-501 of the general obligations law and any regulations of the banking board pursuant to section fourteen-a of the banking law) received by it during the preceding year on all such new mortgages and (b) the total amount of interest which such mortgages would have yielded if the interest thereon had been at the discount rate plus the interest differential determined by the Agency...." (emphasis supplied). This means that if the funds are loaned at an interest rate below the discount rate plus the interest differential, the banks will be required to dip into the proceeds of the mortgage to make payment to the low rent lease account. This would probably be unacceptable to the banking institutions and might forestall the lending of any Agency funds if the corporate interest rate falls below the discount rate plus the interest differential. It appears that this provision should have provided that the excess of (a) over (b) be paid over.

6. Other State agencies interested: The Department of Audit and Control, the Banking Department, the Housing Finance Agency, the Urban Development Corporation, the Department of Taxation and Finance and the Division of Housing and Community Renewal would undoubtedly be interested in this proposal.
7. Position of other organizations: Unknown.
8. Budget implications: Over and above the annual appropriation that would presumably have to be made to the Agency for operating expenses and additions to the debt service reserve fund, the tax credit provided by this proposal could result in an annual State revenue loss of up to \$2 million for the life of the mortgages.

The long-term revenue loss would depend on the life of the mortgages sold to the Agency. The annual revenue loss would probably not be more than \$2 million, however, as the credit is based on the unpaid principal balance of the mortgages serviced. If the average life of the mortgages sold to the Agency were 20 years, and the entire \$750 million were committed, the long-term revenue loss would be approximately \$20-\$25 million.



9. Budget recommendation:

The intent of this act is to improve the availability of mortgage funding for residents of this State - a need which is virtually unarguable. We believe this need will not be met, or even alleviated, by this proposal in a timely manner, since the bonds are not likely to be marketable at an acceptable interest rate in the near future. There is some doubt whether this proposal can "thread the needle" between:

- (a) unconstitutionality due to violation of the gift and loan provision of the State Constitution; and,
- (b) the requirement that no profit be made lest the bonds may be ruled "arbitrage bonds" and thus be denied tax-exempt status.

A number of other approaches might well be preferable, including:

- (1) lending for, rather than purchasing of, mortgages (such an approach, along the lines of the "discount" operations of the Federal Reserve system, would offer several advantages, namely, it would: avoid exposing the Agency to any liability for "defaults"; preclude the need for a separate mortgage-servicing agreement and the resultant revenue loss attributable to tax relief; allow greater flexibility in altering Agency-bank financial arrangements as money market conditions change; and, perhaps most importantly, would permit the Agency to "extricate" itself from the mortgage financing field as soon as conditions warrant, rather than becoming committed to long-term investments in mortgages and, possibly, management of real property on which defaults have occurred);
- (2) making retirement funds available for home mortgage loans to members of retirement systems;
- (3) petitioning the Federal government to increase the dividend interest differential between commercial banks vs. savings banks and savings and loan associations;
- (4) curtailing, by law, out-of-State mortgage lending; and
- (5) encouraging or supporting rehabilitation efforts such as Better Neighborhoods, Inc. in Schenectady.

The danger of this proposal is that this completely ineffective device may be held out to the public as a panacea when what is needed is an imaginative, coordinated intergovernmental assault on the housing problem as a whole.

For this and the objections cited above, we recommend disapproval of these bills. If S.8582-C is approved, however, the accompanying bills (Chapter amendments S.9208-A and S.9383-A) should also be approved.

In view of the many serious objections raised against this bill, the fact that the bill could probably not be implemented in a timely fashion, and the fact that the sponsors apparently do not view the current shortage of mortgage funds as a temporary, passing phenomenon, it would seem preferable to avoid precipitous action on a measure that would "lock" the State into long-term investments and tax relief, pending



the results of a thorough study during 1970 to identify more feasible approaches toward meeting the desired objectives. If necessary, a special session of the Legislature could be held later in 1970 to enact any necessary enabling legislation.

Drafting Notes:

(a) Senate 8582-C uses the term "multiple dwelling" in two sections; however, the term is never defined in the bill. There are at least three different definitions of the term "multiple dwelling" currently in force in State law. Six statutes (the Multiple Dwelling Law, the Executive Law, the Real Property Law, the Private Housing Finance Law, the Public Housing Law and the Civil Rights Law) limit the use of the term to housing for three or more families living separately. The Real Property Actions and Proceedings Law uses the term to designate housing consisting of six or more apartments. The Multiple Residence Law uses the term to classify housing for three or more families living separately or private two-story family housing with eight or more boarders in residence.

Because of the three different definitions currently in the statutes, the term multiple dwelling should be defined in this bill (see suggestion on definition on page 3 of this memorandum).

(b) Page 11, line 21 of S8582-C; "... the bonds issued for the purpose of purchasing the mortgage ...." This sentence implies that the Agency would use the \$750 million bond authorization to purchase one mortgage. Inasmuch as the Agency will be purchasing more than one mortgage, this portion of the section should read "... the bonds issued for the purpose of purchasing such mortgages...." This sentence would not be changed by either of the two chapter amendments (S9208-A or S9383-A).

(c) Page 19, lines 10-17, S8582-C. The two sentences contained on these lines are identical. Neither of the two chapter amendments (S9208-A and S9383-A) deleted one of these repetitive sentences, except that the words "at maturity" were stricken in the first sentence by Senate 9383-A, and one of them (presumably the latter) should be deleted.

Date: May 8, 1970

HWJ/AR/TFH/BAB:pmr

Disposition:

Examiner:

Harold W. Juhre, Jr.

Veto No.

Chapter No.

E 24

*R. R. Dunham*  
jam

STATE OF NEW YORK

6592

~~IN ASSEMBLY~~

~~April 2, 1970~~

~~Introduced by COMMITTEE ON RULES—(at request of Messrs. Emery, Battista, Bell, Betros, Boland, Buckley, Burns, F. Carroll, S. Carroll, C. Cook, D. Cook, Field, Keenan, Kelly, Marshall, Pisani, Riccio, Rosenberg, Skuse, Tills, Warder)—read once and referred to the Committee on Rules~~

Original bill - Senate 8582-c by Mr. Brydges.

Blue - amendments made by Senate 9208-A by the Rules Committee (at the request of Mr. Brydges).

Red - amendments made by Senate 9383-A by the Rules Committee (at the request of Mr. Brydges).

**AN ACT**

To amend the public authorities law and the tax law in relation to providing increased availability of residential mortgage funds and to establish state of New York mortgage agency, and making an appropriation therefor

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

1 Section 1. Article eight of the public authorities law is hereby  
2 amended by adding thereto a new title to be title seventeen to read  
3 as follows:

**TITLE 17**

**STATE OF NEW YORK MORTGAGE AGENCY ACT**

4 Section 2400. Short title.

5 2401. Legislative findings.

6 2402. Definitions.

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

1. **2403. State of New York mortgage agency.**
2. **2404. Powers of the agency.**
3. **2405. Purchase of mortgages.**
4. **2406. Bonds and notes of the agency.**
5. **2407. Bond authorization.**
6. **2408. Reserve funds and appropriations.**
7. **2409. Remedies of bondholders and noteholders.**
8. **2410. State and municipalities not liable on bonds and notes.**
9. **2411. Agreement of the state.**
10. **2412. Property and income.**
11. **2413. Exemption from taxation of bonds and notes.**
12. **2414. Bonds and notes as legal investments for public off-**
13. **cers and fiduciaries.**
14. **2415. Moneys of the agency.**
15. **2416. Actions.**
16. **2417. Limitation of liability.**
17. **2418. Assistance by state officers, departments, boards and**
18. **commissions.**
19. **2419. Annual report.**
20. **2420. Court proceedings; preferences; venue.**
21. **2421. Inconsistent provisions of other laws superseded.**
22. **2422. Construction.**
23. **2423. Separability.**
24. **§ 2400. Short title. This title shall be known and may be cited**
25. **as the "state of New York mortgage agency act".**
26. **§ 2401. Legislative findings. It is hereby found and declared**
27. **that there continues to exist throughout the state a seriously inade-**

1. adequate supply of safe and sanitary dwelling accommodations, includ-  
2. ing accommodations for persons and families of low income. This  
3. condition is contrary to the public interest and threatens the health,  
4. safety, welfare, comfort and security of the people of the state.  
5. It is found and declared that one major cause of this condition  
6. is the critical shortage of funds in private banking channels avail-  
7. able for residential mortgages. This shortage has contributed and  
8. is contributing to a drastic reduction in construction starts of  
9. new residential units. In addition, it has made the sale and pur-  
10. chase of existing residential units a virtual impossibility in many  
11. parts of the state. The ordinary operations of private enterprise  
12. cannot correct these conditions.

13. It is further found and declared that the drastic reduction in  
14. residential construction starts has caused and is causing a con-  
15. dition of substantial unemployment and underemployment in the  
16. construction industry which results in hardships to many indi-  
17. viduals and families, wastes vital human resources, increases the  
18. public assistance burdens of the state and municipalities, impairs  
19. the security of family life, impedes the economic and physical  
20. development of municipalities and adversely affects the welfare  
21. and prosperity of all the people of the state. Increased availability  
22. of financing for residential mortgages is required to spur new  
23. housing starts and thereby to reduce the hazards of unemploy-  
24. ment and underemployment in the construction industry. The  
25. unaided operations of private enterprise have not met and cannot  
26. meet the need for increased funds for residential mortgage finan-  
27. cing.

1 *It is further found and declared that these conditions contribute*  
2 *and will continue to contribute to the persistence of slums and*  
3 *blight and to the deterioration of the quality of the environment*  
4 *and living conditions of a large number of persons residing in the*  
5 *state of New York, have adversely affected the economy of the state*  
6 *as a whole and are contrary to the declared policy of the state to*  
7 *promote a vigorous and growing economy, to prevent economic*  
8 *stagnation, to increase revenues to the state and to its municipalities*  
9 *and to achieve stable local economies.*

10 *Based upon the above findings and declarations, it is hereby*  
11 *determined and declared that a condition of affairs exists in this*  
12 *state which is contrary to the public health, safety and general*  
13 *welfare and which constitutes a public emergency, the alleviation*  
14 *of which mandates the exercise of the power of the state to deal*  
15 *therewith and for these purposes, there should be created a corpo-*  
16 *rate governmental agency to be known as the "state of New York*  
17 *mortgage agency" which, through issuance of bonds and notes to*  
18 *the private investing public, may purchase existing mortgages from*  
19 *banks within the state and direct the proceeds from the liquidated*  
20 *mortgage investments into new mortgages on residential real prop-*  
21 *erty for family units.*

22 *§ 2402. Definitions. As used in this title, the following words and*  
23 *terms shall have the following meanings unless the context shall*  
24 *indicate another or different meaning or intent:*

25 *(1) "Agency". The state of New York mortgage agency, the*  
26 *corporate governmental agency created by section two thousand*  
27 *four hundred three of this title.*

1 (2) "Bank". Any bank or trust company, savings bank, savings  
2 and loan association, industrial bank, credit union, national bank-  
3 ing association, federal savings and loan association or federal  
4 credit union which is located in the state.

5 (3) "Bonds" and "Notes". The bonds and notes respectively  
6 issued by the agency pursuant to this title.

7 (4) "Comptroller". The comptroller of the state.

8 (5) "Mortgage". A loan owed to a bank secured by a first lien  
9 on real property located in the state and improved by a residential  
10 structure, whether or not insured or guaranteed by the United  
11 States of America or any agency thereof.

12 (6) "State". The state of New York.

13 (7) "State agency". Any office, department, board, commission,  
14 bureau, division, public corporation, agency or instrumentality of  
15 the state.

16 § 2403: State of New York mortgage agency. (1) There is  
17 hereby created the state of New York mortgage agency. The  
18 agency shall be a corporate governmental agency of the state,  
19 constituting a political subdivision and public benefit corpora-  
20 tion. Its membership shall consist of five directors as follows:

21 the superintendent of banks, ~~the commissioner of housing~~  
22 ~~and community renewal~~ and three directors to be appointed by  
23 the governor with the advice and consent of the senate. The  
24 members first appointed by the governor shall be appointed within  
25 ten days of the effective date of this title and shall serve for  
26 terms ending two, three and four years, respectively, from January  
27 first next succeeding their appointment. Their successors shall

the comptroller or a <sup>Member</sup> representative  
appointed by the comptroller  
designated by him who shall  
serve until his successor is  
appointed  
[designated],

1 serve for terms of four years each. Directors shall continue in  
 2 office until their successors have been appointed and qualified. In  
 3 the event of a vacancy occurring in the office of a director by death,  
 4 resignation or otherwise, the governor shall appoint a successor  
 5 with the advice and consent of the senate to serve for the bal-  
 6 ance of the unexpired term. From the three directors appointed  
 7 by him, the governor shall designate the chairman of the agency  
 8 who shall be the chief executive officer of the agency. The gov-  
 9 ernor shall designate the first chairman within ten days of the  
 10 effective date of this title.

11 (2) The directors shall serve without salary, but each director  
 12 shall be entitled to reimbursement for his actual and necessary  
 13 expenses incurred in the performance of his official duties, and,  
 14 except in the case of the superintendent of banks, ~~the commis-~~  
 15 ~~sioner of housing and community renewal~~, and any director who  
 16 serves as chairman of the agency, a per diem allowance of one  
 17 hundred dollars when rendering services as such director, pro-  
 18 vided that the aggregate of such per diem allowance to any one  
 19 director in any one fiscal year shall not exceed the sum of five  
 20 thousand dollars. Anything to the contrary contained herein not-  
 21 withstanding, the chairman of the agency shall be entitled to  
 22 receive such salary as the directors may determine for his services  
 23 as chief executive officer.

24 (3) Such directors other than the superintendent of banks, the  
 25 ~~commissioner of housing and community renewal~~ <sup>comptroller</sup> and any direc-  
 26 tor who serves as chairman of the agency may engage in private  
 27 employment, or in a profession or business. The agency, its

← comptroller or his appointee if  
 he is an officer or employee of  
 the state or any subdivision  
 thereof.

1 directors, officers and employees shall be subject to the provisions  
2 of sections seventy-three and seventy-four of the public officers law.

3 (4) Notwithstanding any inconsistent provisions of law, general,  
4 special or local, no officer or employee of the state or of any  
5 civil division thereof shall be deemed to have forfeited or shall  
6 forfeit his office or employment by reason of his acceptance of  
7 membership on the agency created by this section; provided, how-  
8 ever, a director who holds such other public office or employment  
9 shall receive no additional compensation or allowance for services  
10 rendered pursuant to this title, but shall be entitled to reimburse-  
11 ment for his actual and necessary expenses incurred in the  
12 performance of such services.

13 (5) The governor may remove any director appointed by him for  
14 inefficiency, neglect of duty or misconduct in office after giving  
15 him a copy of the charges against him and an opportunity to be  
16 heard, in person or by counsel, in his defense, upon not less than  
17 ten days' notice. If any such director shall be removed, the  
18 governor shall file in the office of the department of state a complete  
19 statement of charges made against such director and his findings  
20 thereon, together with a complete record of the proceeding.

21 (6) The agency and its corporate existence shall continue until  
22 terminated by law, provided, however, that no such law shall take  
23 effect so long as the agency shall have bonds, notes and other  
24 obligations outstanding, unless adequate provision has been made  
25 for the payment thereof. Upon termination of the existence of  
26 the agency, all its rights and properties shall pass to and be vested  
27 in the state.



1 (7) A majority of the directors of the agency then in office shall  
2 constitute a quorum for the transaction of any business or the  
3 exercise of any power or function of the agency. The agency may  
4 delegate to one or more of its directors, or its officers, agents or  
5 employees, such powers and duties as it may deem proper.

6 § 2404. Powers of the agency. Except as otherwise limited by this  
7 title, the agency shall have power:

- 8 (1) To sue and be sued;
- 9 (2) To have a seal and alter the same at pleasure;
- 10 (3) To make and execute contracts and all other instruments  
11 necessary or convenient for the exercise of its powers and func-  
12 tions under this title;
- 13 (4) To make and alter by-laws for its organization and internal  
14 management;
- 15 (5) To acquire, hold and dispose of real and personal property  
16 for its corporate purposes;
- 17 (6) To appoint officers, agents and employees, prescribe their  
18 duties and qualifications and fix their compensation;
- 19 (7) To acquire, and contract to acquire, mortgages owned by  
20 banks and to enter into advance commitments to banks for the  
21 purchase of said mortgages, all subject to the provisions of sec-  
22 tion two thousand four hundred five of this title;
- 23 (8) Subject to any agreement with bondholders or noteholders,  
24 to invest moneys of the agency not required for immediate use,  
25 including proceeds from the sale of any bonds or notes, in obliga-  
26 tions of the state or the United States of America or obligations  
27 the principal and interest of which are guaranteed by the state or

1 the United States of America or in certificates of deposit or time  
 2 deposits secured in such manner as the agency shall determine, pro-  
 3 vided, however, the investment of the debt service reserve fund  
 4 shall be limited to obligations maturing in not more than two years  
 5 from the date of the investment; ] ←

6 (9) Subject to any agreement with bondholders or noteholders,  
 7 to sell any mortgages or other personal property acquired by the  
 8 agency whenever it is determined by the agency that the sale of  
 9 such property is desirable; mortgages acquired by the agency shall  
 10 be sold by the agency only at public sale at such price or prices  
 11 as it shall determine and a notice of such sale shall be published  
 12 at least once at least five days prior to the date of such sale in  
 13 a financial newspaper or journal published in the city of New York;

14 (10) Subject to any agreement with bondholders or noteholders,  
 15 to purchase bonds or notes of the agency, which shall thereupon be  
 16 cancelled, at a price not exceeding (a) if the bonds or notes are  
 17 then redeemable, the redemption price then applicable plus accrued  
 18 interest to the next interest payment date thereon, or (b) if  
 19 the bonds or notes are not then redeemable, the redemption price  
 20 applicable on the first date after such purchase upon which the  
 21 notes or bonds become subject to redemption plus accrued inter-  
 22 est to said date;

23 (11) To borrow money and to issue negotiable bonds and notes  
 24 and to provide for the rights of the holders thereof;

25 (12) To engage the services of private consultants on a contract  
 26 basis for rendering professional and technical assistance and advice;

and provide further that so long as the agency shall have determined to discontinue the purchase of mortgages pursuant to subdivision ten of section two thousand four hundred five of this title, such moneys of the agency shall be invested only in obligations of the state or the United States of America or obligations the principal and interest of which are guaranteed by the state of the United States of America and either (a) the yield from which does not exceed the average net interest cost per annum, expressed as a percentage, on all bonds of the agency then outstanding, or (b) the income from which is exempt from federal taxation.

1 (13) To make and execute contracts for the servicing of mort-  
2 gages acquired by the agency pursuant to this title, and to pay the  
3 reasonable value of services rendered to the agency pursuant to  
4 those contracts;

5 (14) To renegotiate, refinance or foreclose, or contract for the  
6 foreclosure of, any mortgage in default; to waive any default or  
7 consent to the modification of the terms of any mortgage; to com-  
8 mence any action to protect or enforce any right conferred upon it  
9 by any law, mortgage, contract or other agreement, and to bid for  
10 and purchase such property at any foreclosure or at any other sale,  
11 or acquire or take possession of any such property; to operate,  
12 manage, lease, dispose of, and otherwise deal with such property,  
13 in such manner as may be necessary to protect the interests of the  
14 agency and the holders of its bonds and notes;

15 (15) To contract for and to accept any gifts or grants or loans  
16 of funds or property or financial or other aid in any form from  
17 the federal government or any agency or instrumentality thereof,  
18 or from the state or any agency or instrumentality thereof, or from  
19 any other source and to comply, subject to the provisions of this  
20 title, with the terms and conditions thereof;

21 (16) To enter into agreements, in its discretion, to pay annual  
22 sums in lieu of taxes to any municipality or taxing district of the  
23 state in respect of any real property which is owned by the agency  
24 and located in such municipality or taxing district, provided, how-  
25 ever, that the amount so paid for any year upon such property  
26 shall not exceed the sum last paid as taxes on such property to  
27 such municipality or taxing district prior to the time of its acqui-  
28 sition by the agency;

1 (17) To do any and all things necessary or convenient to carry  
2 out its purposes and exercise the powers given and granted in  
3 this title.

4 § 2405. Purchase of mortgages. (1) The purpose of the agency  
5 shall be to purchase mortgages from banks within the state with  
6 the object of enabling such banks to invest the proceeds thereof as  
7 rapidly as possible in new mortgages on residential real property  
8 for family units within the state.

9 It is hereby found and declared that such activities by the agency  
10 will alleviate an existing condition of affairs in this state which is  
11 contrary to the public health, safety and general welfare and which  
12 constitutes a public emergency. It is further found and declared  
13 that such purposes are in all respects for the benefit of the people  
14 of the state of New York and the agency shall be regarded as per-  
15 forming an essential governmental function in carrying out its  
16 purposes and in exercising the powers granted by this title.

17 (2) The agency shall purchase mortgages from banks at a pur-  
18 chase price equal to the unpaid principal balance thereof discounted  
19 to maturity ~~on the basis of the excess of (a) the interest rate~~  
20 ~~payable by the agency~~ on the bonds issued for the purpose of  
21 purchasing the mortgage hereinafter referred to as "discount  
22 rate" ~~over (b) the rate of interest provided by the mortgage;~~  
23 provided, however, that the purchase price shall in no event be  
24 more than the unpaid principal balance thereof. As used in this  
25 subdivision, the term "maturity" shall mean the later of the date  
26 of maturity provided in the mortgage documents or "maturity"  
27 as defined in applicable regulations of the banking board setting

by such factor as will yield to the agency  
the average net interest cost per annum  
expressed as a percentage

plus such percentage, not in excess of  
one-half of one percent, as the agency  
shall determine (such average net interest  
cost plus such percentage determined  
by the agency to be

1 maximum allowable interest rates pursuant to section fourteen-a  
2 of the banking law.

3 (3) The agency shall require as a condition of purchase of  
4 mortgages from banks that such banks shall, within thirty days  
5 of receipt of the purchase price, enter into written commitments  
6 to loan and shall, within such period as may be approved by  
7 the agency, loan an amount equal to the entire purchase price  
8 of such mortgages on new mortgages <sup>within the State</sup> having a stated maturity of  
9 not less than twenty years from the date thereof. ←

0 (4) In case of individual borrowers, such new mortgages shall  
1 bear interest computed in accordance with section 5-501 of the  
2 general obligations law at a rate ~~[not substantially lower than the~~  
3 ~~rate of interest that banks are charging at the time of commitment~~  
4 ~~on comparable new mortgages, but not in excess of the maximum~~  
5 ~~permissible interest rate under section 5-501 of the general obli-~~  
6 ~~gations law and applicable regulations of the banking board pur-~~  
7 ~~suant to section fourteen-a of the banking law, provided, however,~~  
8 ~~if the discount rate exceeds six and one-half percent, the inter-~~  
9 ~~est rate on such new mortgages]~~ notwithstanding the maximum  
10 interest rate fixed by section 5-501 of the general obligations law,  
11 <sup>equal to</sup> ~~[may be not in excess of]~~ the discount rate plus an interest differ-  
12 ential which shall be that rate, not in excess of one percent per  
13 annum, which the agency from time to time shall determine to  
14 be adequate consideration to induce such banks to sell existing  
15 mortgages to the agency and to loan the proceeds on new mortgages  
16 in furtherance of the purposes of and subject to the conditions of  
17 this title. In the case of corporate borrowers, such new mortgages

may refuse to approve any commitment  
to lend on such a multiple dwelling mortgage  
is so required by the terms of any banking  
resolution and

No commitment to loan or loan on  
a mortgage secured or to be secured  
by a multiple dwelling shall satisfy  
the foregoing requirement unless  
(a) the borrower is a corporation, and  
(b) the prior written approval of such  
commitment shall have been obtained  
from the agency. The agency shall  
<sup>approve</sup> no ~~long~~ commitment to lend on such  
a multiple dwelling if the approval  
thereof would increase the total  
dollar amount of such commitments  
on multiple dwelling mortgages  
approved by the agency to an amount  
in excess of forty percent of the  
total purchase price of all mortgages  
therefor purchased by the agency  
pursuant to this section.

(whether or not insured or guaranteed  
by the United States of America or an  
agency thereof)

1 shall bear interest at a rate not substantially lower than the rate of  
 2 interest that banks are charging at the time of commitment on com-  
 3 parable new mortgage loans. Each such bank shall annually account  
 4 and pay over to the New York state housing finance agency for  
 5 deposit in and for the purposes of the low rent lease account fore-  
 6 ated by subdivision four of section forty-four-a of the private hous-  
 7 ing finance law or any successor entity an amount equal to the  
 8 difference between (a) the total amount of interest received by it  
 9 during the preceding year on all such new mortgages and (b) the  
 10 total amount of interest which such mortgages would have yielded  
 11 if the interest thereon had been at the discount rate plus the interest  
 12 differential determined by the agency as described in this subdivi-  
 13 sion.

14 (5) The agency shall require the submission to it by each bank  
 15 from which the agency has purchased mortgages evidence satis-  
 16 factory to the agency of the making of new mortgage loans and  
 17 of paying over to the low rent lease account as required by this  
 18 section and in connection therewith may, through its employees or  
 19 agents or those of the banking department, inspect the books and  
 20 records of any such bank.

21 (6) Compliance by any bank with the terms of its agreement  
 22 with or undertaking to the agency with respect to the making of  
 23 any mortgage loans and of paying over to the low rent lease account  
 24 may be enforced by decree of the supreme court. The agency may  
 25 require as a condition of purchase of mortgages from any national  
 26 banking association the consent of such association to the jurisdic-  
 27 tion of the supreme court over any such proceeding. The agency  
 28 may also require agreement by any bank, as a condition of the

(which shall include all charges to individual and corporate borrowers that would be treated as interest under section 5-501 of the general obligations law and any regulations of the banking board pursuant to section fourteen-a of the banking law)

1 agency's purchase of mortgages from such bank, to the payment  
 2 of penalties to the agency for violation by the bank of its under-  
 3 takings to the agency, and such penalties shall be recoverable  
 4 at the suit of the agency.

5 (7) The agency shall require as a condition of purchase of any  
 6 mortgage from a bank that the bank represent and warrant to  
 7 the agency that

8 (a) the unpaid principal balance of the mortgage and the inter-  
 9 est rate thereon have been accurately stated to the agency;

10 (b) the amount of the unpaid principal balance is justly due  
 11 and owing;

12 (c) the bank has no notice of the existence of any counterclaim,  
 13 offset or defense asserted by the mortgagor or his successor in  
 14 interest;

15 (d) the mortgage is evidenced by a bond or promissory note  
 16 and a mortgage document which has been properly recorded with  
 17 the appropriate public official;

18 (e) the mortgage constitutes a valid first lien on the real prop-  
 19 erty described to the agency subject only to real property taxes  
 20 not yet due and installments of assessments not yet due;

21 (f) the mortgage loan when made was lawful under the banking  
 22 law or federal law, whichever governs the affairs of the bank,  
 23 and would be lawful on the date of purchase by the agency if  
 24 made by the bank on that date in the amount of the then unpaid  
 25 principal balance;

26 (g) the mortgagor is not now in default in the payment of any  
 27 installment of principal or interest, escrow funds, real property

1 faces or otherwise in the performance of his obligations under the  
 2 mortgage documents and has not to the knowledge of the bank been  
 3 in default in the performance of any such obligation for a period  
 4 of longer than sixty days during the life of the mortgage, and

5 (h) the improvements to the mortgaged real property are cov-  
 6 ered by a valid and subsisting policy of insurance issued by a  
 7 company authorized by the superintendent of insurance to issue  
 8 such policies in the state of New York and providing fire and  
 9 extended coverage to an amount not less than eighty percent of  
 10 the insurable value of the improvements to the mortgaged real  
 11 property.

12 (8) Each bank shall be liable to the agency for any damages suf-  
 13 fered by the agency by reason of the untruth of any representation  
 14 or the breach of any warranty and, in the event that any representa-  
 15 tion shall prove to be untrue when made or of any breach of war-  
 16 ranty, the bank shall, at the option of the agency, repurchase the  
 17 mortgage for the original purchase price less amounts subsequently  
 18 paid in reduction of the principal balance plus any interest accrued  
 19 but unpaid.

20 (9) The agency need not require the recording of an assignment  
 21 of any mortgage purchased by it from a bank pursuant to this sec-  
 22 tion and shall not be required to notify the mortgagor of its purchase  
 23 of the mortgage. The agency shall not be required to inspect or  
 24 take possession of the mortgage documents if the bank from which  
 25 the mortgage is purchased by the agency shall enter a contract  
 26 to service such mortgage and account to the agency therefor.

27 (10) Prior to the issuance of any bonds or notes and prior to the  
 28 commencement of the purchase of mortgages or commitments to

in the event



1 purchase mortgages, the agency shall determine that an inade-  
 2 quate supply of funds continues to exist in regular banking channels  
 3 for new mortgage loans. Thereafter the agency shall maintain  
 4 a continuous review of the availability of funds in regular banking  
 5 channels for new mortgage loans. In the event that the agency  
 6 shall determine that an adequate supply of funds exists in  
 7 regular banking channels for new mortgage loans the agency  
 8 shall discontinue the purchase of mortgages until such time  
 9 as the agency shall determine that the supply of funds avail-  
 10 able for mortgages is again inadequate, but in any event the  
 11 agency shall discontinue purchasing mortgages on and after  
 12 the thirty-first day of December, nineteen hundred seventy-  
 13 four. The agency shall notify the governor, the temporary presi-  
 14 dent of the senate, and the speaker of the assembly of any  
 15 determination made by it under this subdivision. Discontinuance  
 16 by the agency of the purchase of mortgages pursuant to a determi-  
 17 nation that an adequate supply of funds exists in regular bank-  
 18 ing channels shall not constitute, or in any way effect, termina-  
 19 tion of the agency as provided in subdivision six of section  
 20 ~~two thousand four hundred three~~ <sup>two thousand four hundred three</sup>  
~~twenty three hundred fifty three~~ of this title.

21 § 2406. Bonds and notes of the agency. (1) Subject to the provi-  
 22 sions of section two thousand four hundred seven of this title,  
 23 the agency shall have the power and is hereby authorized from time  
 24 to time to issue its negotiable bonds and notes in conformity with  
 25 applicable provisions of the uniform commercial code in such princi-  
 26 pal amounts as, in the opinion of the agency, shall be necessary to

NN 1

1 provide sufficient funds for achieving the corporate purposes hereof,  
 2 including the purchase of mortgages from banks, the payment of  
 3 interest on bonds and notes of the agency, establishment of reserves  
 4 to secure such bonds and notes, and all other expenditures of the  
 5 agency incident to and necessary or convenient to carry out its  
 6 corporate purposes and powers, except the operating expenses of  
 7 the agency.

8 (2) All bonds and notes issued by the agency shall be general  
 9 obligations of the agency, secured by the full faith and credit of the  
 10 agency and may be payable solely out of any moneys, assets, or  
 11 revenues of the agency, all as may be designated in the proceedings  
 12 of the agency under which the bonds or notes shall be authorized  
 13 to be issued.

14 (3) Bonds and notes shall be authorized by a resolution or reso-  
 15 lutions of the agency adopted as provided by this title; provided,  
 16 however, that any such resolution authorizing the issuance of notes  
 17 may delegate to an officer of the agency the power to issue such  
 18 notes from time to time and to fix the details of any such issues  
 19 of notes by an appropriate certificate of such authorized officer.

20 (4) Such bonds or notes shall bear such date or dates, shall  
 21 mature at such time or times, shall bear interest at such rate or  
 22 rates, shall be of such denominations, shall be in such form, carry  
 23 such registration privileges, be executed in such manner, be payable  
 24 in lawful money of the United States of America at such place  
 25 or places within or without the state, be subject to such terms  
 26 of redemption prior to maturity as may be provided by such reso-  
 27 lution or resolutions or such certificate with respect to such notes,

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1 as the case may be; provided, however, that the maximum matur-  
2 ity of bonds shall not exceed thirty years from the date thereof  
3 and the maximum maturity of notes or any renewals thereof shall  
4 not exceed seven years from the date of the original issue of such  
5 notes.

6 (5) Any bonds or notes of the agency may be sold at such price  
7 or prices, at public or private sale, in such manner and from  
8 time to time as may be determined by the agency, and the agency  
9 may pay all expenses, premiums and commissions which it may  
10 deem necessary or advantageous in connection with the issuance and  
11 sale thereof. No bonds or notes of the agency may be sold at  
12 private sale, however, unless such sale and the terms thereof have  
13 been approved in writing by (a) the comptroller ~~where~~ such sale  
14 is not to the comptroller, or (b) the state director of the budget,  
15 ~~where~~ such sale is to the comptroller.

if  
and the comptroller is not then  
serving as a director of the  
agency

16 (6) The agency is authorized to provide for the issuance of  
17 its bonds or notes for the purpose of refunding any bonds or notes  
18 of the agency then outstanding, including the payment of any  
19 redemption premiums thereon and any interest accrued or to accrue  
20 to the redemption date next succeeding the date of delivery of  
21 such refunding bonds or notes. The proceeds of any such bonds  
22 or notes issued for the purpose of so refunding outstanding bonds  
23 or notes ~~may, in the discretion of the agency,~~ <sup>shall be forthwith</sup> ~~be~~ applied to the  
24 purchase or retirement ~~at maturity~~ of such outstanding bonds or  
25 notes or the redemption of such outstanding bonds or notes on  
26 the redemption date next succeeding the date of delivery of such  
27 refunding bonds or notes and may, pending such application, be  
28 placed in escrow to be applied to such purchase or retirement ~~at~~

if  
or the comptroller is then  
serving as a director of the  
agency.

1 maturity] or redemption on such date. ~~[as may be determined by~~  
 2 ~~the agency.]~~ Any such escrowed proceeds, pending such use, may  
 3 be invested and reinvested <sup>only</sup> in obligations of or guaranteed by  
 4 the state or the United States of America, ~~[or in certificates~~  
 5 ~~of deposit or time deposits secured in such manner as the agency~~  
 6 ~~shall determine]~~ maturing at such time or times as shall be appro-  
 7 priate to assure the prompt payment, as to principal, interest and  
 8 redemption premium, if any, on the outstanding bonds or notes to be  
 9 so refunded by purchase, retirement ~~[at maturity]~~ or redemption,  
 10 as the case may be. The interest, income and profits, if any,  
 11 earned or realized on any such investment may also be applied to  
 12 the payment of the outstanding bonds or notes to be so refunded  
 13 by purchase, retirement ~~[at maturity]~~ or redemption, as the case  
 14 may be. The interest, income and profits, if any, earned or  
 15 realized on any such investment may also be applied to the payment  
 16 of the outstanding bonds or notes to be so refunded by purchase,  
 17 retirement ~~at maturity~~ or redemption, as the case may be. After the  
 18 terms of the escrow have been fully satisfied and carried out, any  
 19 balance of such proceeds and interest, if any, earned or realized  
 20 on the investments thereof may be returned to the agency for use  
 21 by it in any lawful manner. All such bonds or notes shall be  
 22 issued and secured and shall be subject to the provisions of this  
 23 title in the same manner and to the same extent as any other  
 24 bonds or notes to this title.

25 (7) Whether or not the bonds and notes are of such form and  
 26 character as to be negotiable instruments under the terms of the  
 27 uniform commercial code, the bonds and notes are hereby made

and either (a) the yield from which  
 does exceed the average net interest  
 cost per annum, expressed as a  
 percentage, on such refunding  
 bonds, or (b) the income from  
 which is exempt from federal  
 taxation

1 negotiable instruments within the meaning of and for all the pur-  
2 poses of the uniform commercial code, subject only to the provisions  
3 of the bonds and notes for registration.

4 (8) Subject only to the provisions of sections two thousand  
5 four hundred seven and two thousand four hundred eight of  
6 this title, any resolution or resolutions authorizing any bonds  
7 or notes of the agency may contain provisions which may be a  
8 part of the contract with the holders of such bonds or notes, as to: (a)  
9 pledging or creating a lien, to the extent provided by such resolution  
10 or resolutions, on all or any part of any monies or property of the  
11 agency or of any moneys held in trust or otherwise by others for  
12 the payment of such bonds or notes; (b) otherwise providing for the  
13 custody, collection, securing, investment and payment of any moneys  
14 of the agency; (c) the setting aside of reserves or sinking funds and  
15 the regulation or disposition thereof; (d) limitations on the purpose  
16 to which the proceeds of sale of any issue of such bonds or notes  
17 then or thereafter to be issued may be applied; (e) limitations on  
18 the issuance of additional bonds or notes, the terms upon which  
19 additional bonds or notes may be issued and secured, and upon the  
20 refunding of outstanding or other bonds or notes; (f) the procedure,  
21 if any, by which the terms of any contract with the holders of bonds  
22 or notes may be amended or abrogated, the amount of bonds or notes  
23 the holders of which must consent thereto and the manner in which  
24 such consent may be given; (g) the creation of special funds into  
25 which any moneys of the agency may be deposited; (h) vesting in  
26 a trustee or trustees such properties, rights, powers and duties in  
27 trust as the agency may determine, which may include any or all of  
28 the rights, powers and duties of the trustee appointed pursuant to

22 64

1 section two thousand four hundred nine of this title, and limiting  
 2 or abrogating the right of the holders of bonds or notes to appoint a  
 3 trustee under such section or limiting the rights, duties and powers  
 4 of such trustee; (i) defining the acts or omissions to act which shall  
 5 constitute a default in the obligations and duties of the agency and  
 6 providing for the rights and remedies of the holders of bonds or  
 7 notes in the event of such default, providing, however, that such  
 8 rights and remedies shall not be inconsistent with the general laws  
 9 of this state and other provisions of this title; and (j) any other  
 10 matters of like or different character, which in any way affect the  
 11 security and protection of the bonds or notes and the rights of the  
 12 holders thereof.

13 (9) Any resolution or resolutions or trust indenture or inden-  
 14 tures under which bonds or notes of the agency are authorized  
 15 to be issued may contain provisions for vesting in a trustee or  
 16 trustees such properties, rights, powers and duties in trust as the  
 17 agency may determine which may include any or all of the rights,  
 18 powers and duties of the trustee appointed by the holders of any  
 19 issue of notes or bonds pursuant to section two thousand four hun-  
 20 dred nine of this title, in which event the provisions of said section  
 21 two thousand four hundred nine authorizing the appointment of a  
 22 trustee by such holders of bonds or notes shall not apply.

23 (10) It is the intention of the legislature that any pledge of  
 24 earnings, revenues or other moneys made by the agency shall  
 25 be valid and binding from the time when the pledge is made; that  
 26 the earnings, revenues or other moneys so pledged and there-  
 27 after received by the agency shall immediately be subject to the

1 lien of such pledge without any physical delivery thereof or  
2 further act, and that the lien of any such pledge shall be valid  
3 and binding as against all parties having claims of any kind in  
4 tort, contract or otherwise against the agency irrespective of  
5 whether such parties have notice thereof. Neither the resolution  
6 nor any other instrument by which a pledge is created need be  
7 recorded.

8 (11) Neither the members of the agency nor any person executing  
9 the bonds or other obligations shall be liable personally on the  
10 bonds or other obligations or be subject to any personal liability  
11 or accountability by reason of the issuance thereof.

12 § 2407. Bond authorization. (1) The agency shall not issue bonds  
13 and notes in an aggregate principal amount at any one time out-  
14 standing exceeding seven hundred fifty million dollars, excluding  
15 bonds and notes issued to refund outstanding bonds and notes.

16 (2) The fixing of the statutory maximum in this section shall not  
17 be construed as constituting a contract between the agency and the  
18 holders of its bonds or notes that additional bonds and notes may not  
19 be issued subsequently by the agency in the event that such statutory  
20 maximum shall subsequently be increased by law.

21 § 2408. Reserve funds and appropriations. (1) The agency may  
22 create and establish a special fund to be known as debt service  
23 reserve fund and pay into such reserve fund (a) any moneys  
24 appropriated by the state only for the purposes of such fund, (b)  
25 any proceeds of sale of bonds and notes to the extent provided in  
26 the resolution of the agency authorizing the issuance thereof, (c)  
27 any funds directed to be transferred by the agency to such debt

1 service reserve fund, and (d) any other moneys made available  
2 to the agency only for the purposes of such fund from any other  
3 source or sources. The moneys held in or credited to the debt  
4 service reserve fund established under this subdivision, except as  
5 hereinafter provided, shall be used solely for the payment of the  
6 principal of bonds of the agency, as the same mature, the purchase  
7 of bonds of the agency, the payment of interest on bonds of the  
8 agency or the payment of any redemption premium required to be  
9 paid when such bonds or notes are redeemed prior to maturity,  
10 provided, however, that moneys in such fund shall not be withdrawn  
11 therefrom at any time in such amount as would reduce the amount  
12 of such fund to less than the amount which the agency shall deter-  
13 mine to be reasonably necessary for the purposes of such fund,  
14 except for the purpose of paying the principal of and interest on  
15 the bonds of the agency maturing and becoming due for the pay-  
16 ment of which other moneys of the agency are not available.  
17 Moneys in the debt service reserve fund not required for immedi-  
18 ate use or disbursement may be invested in obligations of the  
19 state or the United States of America or obligations the principal  
20 and interest of which are guaranteed by the state or the United  
21 States of America. In computing the amount of the debt service  
22 reserve fund for the purposes of this section, securities in which  
23 all or a portion of such fund are invested shall be valued at par or,  
24 if purchased at less than par, at their cost to the agency. If the  
25 agency shall create and establish a debt service reserve fund  
26 as herein provided, the agency shall not issue bonds at any time  
27 if the amount of the debt service reserve fund at the time of



1. the issuance does not equal or exceed the amount determined by  
 2 the agency to be reasonably necessary therefor unless the agency,  
 3 at the time of issuance of such bonds, shall deposit in such fund  
 4 from the proceeds of the bonds to be issued, or otherwise an amount  
 5 which, together with the amount then in such fund, will be not  
 6 less than the amount determined by the agency to be reasonably  
 7 necessary therefor.

8 Any excess in the debt service reserve fund at the close of any  
 9 fiscal year of the agency over the amount determined by the agency  
 10 to be reasonably necessary therefor may be transferred to any  
 11 other fund or account of the agency as the agency may determine.

12 (2) In order to assure the continued operation and solvency  
 13 of the agency for the fulfillment of its corporate purposes, there  
 14 shall be annually apportioned and paid to the agency such sum,  
 15 if any, as shall be certified by the chairman of the agency to the  
 16 governor and director of the budget, if the agency shall have  
 17 established a debt service reserve fund as provided in subdivision  
 18 one of this section, as necessary to restore such debt service reserve  
 19 fund to an amount equal to the amount determined by the agency to  
 20 be reasonably necessary therefor; in which case such sum so appor-  
 21 tioned and paid shall be deposited by the agency in the debt  
 22 service reserve fund.

23 If the agency shall not have established such a debt service reserve  
 24 fund, the agency shall annually determine whether it will have suf-  
 25 ficient funds to pay the principal and interest on the bonds of the  
 26 agency on the date or dates on which such payments shall mature  
 27 and become due during the next succeeding calendar year. In any

; provided, however, that nothing in  
 this subdivision two shall require  
 apportionment or payment of any  
 amount which would increase the  
 debt service reserve fund to an  
 amount in excess of the total amount  
 of principal of and interest on the  
 bonds of the agency payable in the  
~~the current fiscal year~~ next  
 succeeding twelve months.

1 year in which the agency shall determine that a deficit will exist, the  
 2 chairman of the agency shall, on or before December first, make  
 3 and deliver to the governor and state director of the budget his  
 4 certificate stating the amount of such deficit and stating further that  
 5 the agency cannot make available, or cannot make available except  
 6 by sale of mortgages at substantially less than their fair market  
 7 value, sufficient funds to make up such deficit. The amount of such  
 8 deficit so certified shall be apportioned and paid to the agency for  
 9 deposit in such fund as the agency shall have established for the  
 10 payment of the principal and interest on the bonds of the agency  
 11 during the then current state fiscal year.

12 (3) The agency may create and establish such other reserve funds  
 13 as it shall deem advisable and necessary.

14 (4) The chairman of the agency shall make and deliver to the  
 15 governor and director of the budget on or before December first,  
 16 nineteen hundred seventy and on or before December first in each  
 17 year thereafter, a certificate stating the amount estimated to be  
 18 required for payment of or provision for expenses of the agency  
 19 for the next ensuing state fiscal year. The amount so stated for  
 20 any such ensuing state fiscal year shall be the sum of the amounts,  
 21 if any, estimated for such fiscal year, by which operating expenses  
 22 exceed available operating revenues. To assure the continued oper-  
 23 ation and solvency of the agency for the fulfillment of its corpora-  
 24 tion purposes, there shall be apportioned and paid to the agency ~~not~~  
 25 ~~later than the tenth day of each such fiscal year~~ <sup>the</sup> ~~entire~~ amount  
 26 so stated for expenses of the agency for such fiscal year. As used  
 27 in this subdivision, (a) the term "operating expenses" for the

after audit by and upon warrant  
 of the comptroller in vouchers  
 certified or approved by the  
 officer or officers authorized  
 by the agency, not more than

1 fiscal year shall mean ordinary expenditures for operation and  
2 administration of the agency; and (b) the term "available oper-  
3 ating revenues" for the fiscal year shall mean all amounts received  
4 on account of mortgages acquired by the agency, fees charged by  
5 the agency, if any, and income or interest earned or added to  
6 funds of the agency due to the investment thereof, and not  
7 required under the terms or provisions of any covenant or agree-  
8 ment with holders of any bonds or notes of the agency to be  
9 applied to any purposes other than payment of expenses of the  
10 agency.

11 § 2409. Remedies of bondholders and noteholders. (1) In the  
12 event that the agency shall default in the payment of principal  
13 or of interest on any issue of bonds or notes after the same shall  
14 become due, whether at maturity or upon call for redemption,  
15 and such default shall continue for a period of thirty days, or  
16 in the event that the agency shall fail or refuse to comply with  
17 the provisions of this title, or shall default in any agreement made  
18 with the holders of any issue of bonds or notes, the holders of  
19 twenty-five per centum in aggregate principal amount of the  
20 bonds or notes of such issue then outstanding, by instrument or  
21 instruments filed in the office of the clerk of the county in which  
22 the principal office of the agency is located, and proved or acknowl-  
23 edged in the same manner as a deed to be recorded, may appoint  
24 a trustee to represent the holders of such bonds or notes for the  
25 purposes herein provided.

26 (2) Such trustee may, and upon written request of the holders  
27 of twenty-five per centum in principal amount of such bonds or  
28 notes then outstanding shall, in his or its own name,

1 (a) enforce all rights of the bondholders or noteholders, includ-  
 2 ing the right to require the agency to collect interest and amortiza-  
 3 tion payments on the mortgages held by it adequate to carry out  
 4 any agreement as to, or pledge of, such interest and amortization  
 5 payments, and to require the agency to carry out any other agree-  
 6 ments with the holders of such bonds or notes and to perform  
 7 its duties under this title;

8 (b) bring suit upon such bonds or notes;

9 (c) by action or suit, require the agency to account as if it were  
 10 the trustee of an express trust for the holders of such bonds or  
 11 notes;

12 (d) by action or suit, enjoin any acts or things which may  
 13 be unlawful or in violation of the rights of the holders of such  
 14 bonds or notes;

15 (e) declare all such bonds or notes due and payable and if all  
 16 defaults shall be made good then with the consent of the holders of  
 17 twenty-five per centum of the principal amount of such bonds or  
 18 notes then outstanding, to annul such declaration and its conse-  
 19 quences;

20 (3) Such trustee shall in addition to the foregoing have and  
 21 possess all the powers necessary or appropriate for the exercise of  
 22 any functions specifically set forth herein or incident to the general  
 23 representation of bondholders or noteholders in the enforcement  
 24 and protection of their rights.

1 (4) Before declaring the principal of bonds or notes due and  
2 payable, the trustee shall first give thirty days' notice in writing  
3 to the governor, to the agency and to the attorney general of the  
4 state.

5 (5) The supreme court shall have jurisdiction of any suit, action  
6 or proceeding by the trustee on behalf of bondholders or note-  
7 holders. The venue of any such suit, action, or proceeding shall be  
8 laid in the county in which the principal office of the agency is  
9 located.

10 § 2410. State and municipalities not liable on bonds and notes.

11 The bonds, notes and other obligations of the agency shall not be  
12 a debt of the state of New York or of any municipality, and  
13 neither the state nor any municipality shall be liable thereon, nor  
14 shall they be payable out of any funds other than those of the  
15 agency.

16 § 2411. Agreement of the state. The state of New York does

17 hereby pledge to and agree with the holders of any bonds or notes  
18 issued under this title that the state will not limit or alter the rights  
19 hereby vested in the agency to fulfill the terms of any agreements  
20 made with the holders thereof, or in any way impair the rights  
21 and remedies of such holders until such bonds or notes together  
22 with the interest thereon, with interest on any unpaid installments  
23 of interest, and all costs and expenses in connection with any  
24 action or proceedings by or on behalf of such holders, are fully  
25 met and discharged. The agency is authorized to include this  
26 pledge and agreement of the state in any agreement with the  
27 holders of such bonds or notes.

1 § 2412. *Property and income.* *The property of the agency and*  
2 *its income and operations shall be exempt from taxation or assess-*  
3 *ments of every kind and nature, other than assessments for local*  
4 *improvements; nor shall the agency be required to pay any record-*  
5 *ing fee or transfer tax of any kind on account of instruments*  
6 *recorded by it or on its behalf.*

7 § 2413. *Exemption from taxation of bonds and notes.* *It is hereby*  
8 *determined that the creation of the agency is in all respects for*  
9 *the benefit of the people of the state, for the improvement of their*  
10 *health and welfare, and for the promotion of the economy, and*  
11 *that said purposes are public purposes and the agency will be*  
12 *performing an essential governmental function in the exercise of*  
13 *the powers conferred upon it by this title, and the state covenants*  
14 *with the purchasers and all subsequent holders and transferees of*  
15 *bonds and notes issued by the agency, in consideration of the*  
16 *acceptance of and payment for the bonds and notes, that the bonds*  
17 *and notes of the agency, issued pursuant to this title and the income*  
18 *therefrom and all its fees, charges, gifts, grants, revenues, receipts,*  
19 *and other moneys received or to be received, pledged to pay or*  
20 *secure the payment of such bonds or notes shall at all times be*  
21 *free from taxation, except for estate or gift taxes and taxes on*  
22 *transfers.*

23 § 2414. *Bonds and notes as legal investments for public officers*  
24 *and fiduciaries.* *The bonds and notes of the agency are hereby made*  
25 *securities in which all public officers and bodies of this state and*  
26 *all municipalities and municipal subdivisions, all insurance com-*  
27 *panies and associations and other persons carrying on an insurance*

1 *business, all banks, bankers, trust companies, savings banks and*  
2 *savings associations, including savings and loan associations, build-*  
3 *ing and loan associations, investment companies and other per-*  
4 *sons carrying on a banking business, all administrators, guardians,*  
5 *executors, trustees and other fiduciaries, and all other persons what-*  
6 *soever who are now or may hereafter be authorized to invest in*  
7 *bonds or other obligations of the state, may properly and legally*  
8 *invest funds including capital in their control or belonging to*  
9 *them. The bonds and notes are also hereby made securities which*  
10 *may be deposited with and may be received by all public officers*  
11 *and bodies of this state and all municipalities and municipal*  
12 *subdivisions for any purpose for which the deposit of bonds or*  
13 *other obligations of this state is now or may hereafter be authorized.*

14 *§ 2415. Moneys of the agency. (1) All moneys of the agency*  
15 *from whatever source derived, except as otherwise authorized or pro-*  
16 *vided in this act, shall be paid to the treasurer of the agency and*  
17 *shall be deposited forthwith in a bank or banks in the state desig-*  
18 *nated by the agency. The moneys in such accounts shall be paid*  
19 *by the treasurer or other agent duly designated by the agency on*  
20 *requisition of the chairman of the agency or of such other person*  
21 *or persons as the agency may authorize to make such requisitions.*  
22 *All deposits of such moneys, shall, if required by the agency, be*  
23 *secured by obligations of the United States or of the state of New*  
24 *York of a market value equal at all times to the amount of the*  
25 *deposit and all banks and trust companies are authorized to give*  
26 *such security for such deposits. The obligations shall either be*  
27 *deposited with the treasurer or be held by a trustee or agent*

1 satisfactory to the agency. The comptroller and his legally author-  
2 ized representatives are authorized and empowered from time to  
3 time to examine the accounts and books of the agency, including  
4 its receipts, disbursements, contracts, leases, sinking funds, invest-  
5 ments and any other records and papers relating to its financial  
6 standing.

7 (2) The agency shall have power to contract with holders of  
8 any of its bonds or notes, as to the custody, collection, securing,  
9 investment, and payment of any moneys of the agency, of any  
10 moneys held in trust or otherwise for the payment of bonds or  
11 notes, and to carry out such contract. Moneys held in trust or  
12 otherwise for the payment of bonds or notes or in any way to  
13 secure bonds or notes and deposits of such moneys may be secured  
14 in the same manner as moneys of the agency, and all banks and  
15 trust companies are authorized to give such security for such  
16 deposits.

17 (3) Subject to the provisions of any contract with bondholders  
18 or noteholders and to the approval of the comptroller, the agency  
19 shall prescribe a system of accounts.

20 (4) The agency shall submit to the governor, chairman of the  
21 senate finance committee, chairman of the assembly ways and means  
22 committee and the comptroller, within thirty days of the receipt  
23 thereof by the agency, a copy of the report of every external  
24 examination of the books and accounts of the agency other than  
25 copies of the reports of such examinations made by the comptroller.

26 § 2416. Actions. In any case founded upon tort a notice of  
27 claim shall be required as a condition precedent to the commence-



1 ment of an action or special proceeding against the agency or any  
 2 officer, appointee or employee thereof, and the provisions of sec-  
 3 tion fifty-a of the general municipal law shall govern the giving  
 4 of such notice.

5 No action shall be commenced (a) prior to the expiration  
 6 of thirty days from the date on which the demand, claim or  
 7 claims upon which the action is founded were presented to a  
 8 director of the agency or other officer thereof designated for  
 9 such purpose nor (b) more than one year after the cause of action  
 10 therefor shall have accrued.

11 § 2417. Limitation of liability. Neither the members of the  
 12 agency, nor any person or persons acting in its behalf, while  
 13 acting within the scope of their authority, shall be subject to  
 14 any personal liability resulting from carrying out any of the powers  
 15 expressly given in this act.

16 § 2418. Assistance by state officers, departments, boards and com-  
 17 missions. (1) The department of audit and control, department of  
 18 law, and all other state agencies may render such services to the  
 19 agency within their respective functions as may be requested by the  
 20 agency.

21 (2) Upon request of the agency, any state agency is hereby  
 22 authorized and empowered to transfer to the agency such officers  
 23 and employees as it may deem necessary from time to time to assist  
 24 the agency in carrying out its functions and duties under this title.  
 25 Officers and employees so transferred shall not lose their civil serv-  
 26 ice status or rights.

1 § 2419. Annual report. The agency shall submit to the governor,  
2 the chairman of the senate finance committee, the chairman of the  
3 assembly ways and means committee, the comptroller and the  
4 director of the budget within six months after the end of its fiscal  
5 year, a complete and detailed report setting forth: (1) its opera-  
6 tions and accomplishments; (2) its receipts and expenditures dur-  
7 ing such fiscal year in accordance with the categories or classifica-  
8 tions established by the agency for its operating and capital outlay  
9 purposes, including a listing of all private consultants engaged by  
10 the agency on a contract basis and a statement of the total amount  
11 paid to each such private consultant; (3) its assets and liabilities  
12 at the end of its fiscal year, including a schedule of its mortgages  
13 and the status of reserve, special or other funds; and (4) a schedule  
14 of its bonds and notes outstanding at the end of its fiscal year,  
15 together with a statement of the amounts redeemed and incurred  
16 during such fiscal year.

17 § 2420. Court proceedings; preferences; venue. Any action or  
18 proceeding to which the agency or the people of the state of New  
19 York may be parties, in which any question arises as to the validity  
20 of this act, shall be preferred over all other civil causes except elec-  
21 tion causes in all courts of the state of New York and shall be  
22 heard and determined in preference to all other civil business  
23 pending therein except election causes, irrespective of position on  
24 the calendar. The same preference shall be granted upon appli-  
25 cation of counsel to the agency in any action or proceeding ques-  
26 tioning the validity of this title in which he may be allowed to  
27 intervene. The venue of any such action or proceeding shall be

1 laid in the county in which the principal office of the agency is  
2 located.

3 § 2421. Inconsistent provisions of other laws superseded. Insofar  
4 as the provisions of any other law, general, special or local, the  
5 provisions of this title shall be controlling.

6 § 2422. Construction. This title, being necessary for the welfare  
7 of the state and its inhabitants, shall be liberally construed so as  
8 to effectuate its purposes.

9 § 2423. Separability. If any clause, sentence, paragraph, section  
10 or part of this title shall be adjudged by any court of competent  
11 jurisdiction to be invalid, such judgment shall not affect, impair  
12 or invalidate the remainder thereof, but shall be confined in its  
13 operation to the clause, sentence, paragraph, section or part thereof  
14 directly involved in the controversy in which such judgment shall  
15 have been rendered.

16 § 2. Statement of legislative purpose. The Legislature hereby  
17 finds and declares that it is in the public interest that mortgages  
18 acquired by the state of New York mortgage agency pursuant to  
19 the state of New York mortgage agency act shall continue to be  
20 serviced by the banking institutions from which such mortgages  
21 are acquired and that the servicing of such mortgages by such  
22 banking institutions serves the public purpose of this state.

23 § 3. The tax law is hereby amended by adding thereto a new  
24 section, to be section one hundred ninety, to read as follows:

25 § 190. Servicing of mortgages; credit to be given. Every bank,  
26 as defined in section two thousand four hundred two of the public  
27 authorities law, which shall have entered into a contract with  
28 the state of New York mortgage agency to service mortgages

1 acquired by such agency pursuant to the state of New York  
2 mortgage agency act, shall have credited to it annually to apply  
3 upon or in lieu of the payment of any tax to which it may be  
4 subject under article nine-b or nine-c of this chapter an amount  
5 equal to one-quarter of one percentum of the total average unpaid  
6 principal balance of all such mortgages secured by a lien on real  
7 estate improved by one-family or two-family residential structures  
8 and which the bank shall have serviced during the fiscal year, and  
9 an amount equal to one-tenth of one percentum of the total average  
10 unpaid principal balance of all mortgages secured by a lien on real  
11 property improved by multiple dwellings and which the bank shall  
12 have serviced during the fiscal year; provided, however, that there  
13 shall in no case be credited to any such bank an amount in excess of  
14 the amount due from such bank for taxes payable to the state under  
15 article nine-b or nine-c of this chapter for the fiscal year for which  
16 such credit is given. In the event that any such mortgage shall have  
17 been serviced for only a part of the fiscal year, the amount of the  
18 credit provided herein shall be apportioned on the basis of the num-  
19 ber of months during the year such mortgage was serviced by the  
20 bank.

21 § 4. The sum of four hundred thousand dollars (\$400,000), or  
22 so much thereof as may be necessary, is hereby appropriated to the  
23 agency hereby created and made immediately available to pay the  
24 expenses of the agency, including personal service. Such moneys  
25 shall be payable after audit by and upon the warrant of the comp-  
26 troller on vouchers certified or approved by the officer or officers  
27 authorized by the agency.

28 § 5. This act shall take effect immediately.

S. 8582

THE ASSOCIATION OF THE BAR  
OF THE CITY OF NEW YORK  
42 WEST 44TH STREET  
NEW YORK 10036

COMMITTEE ON STATE LEGISLATION

DAVID W. BAKER  
CHAIRMAN  
25 BROADWAY  
NEW YORK 10004  
344-8900

RICHARD A. DAVIS  
SECRETARY  
25 BROADWAY  
NEW YORK 10004  
344-8900

May 5, 1970

Re: 30-day bills

Dear Mr. Douglass:

Memoranda on the following bills, with action to be taken as indicated, will appear in the final Bulletin of this Committee to be dated May 11, 1970:

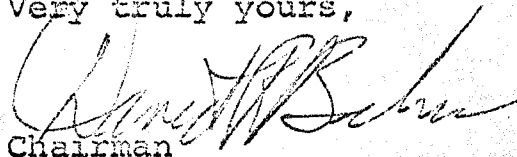
<u>Bill</u>	<u>Action Taken</u>
S. 3166-A	Approved
S. 3167-A	Approved
S. 5831-B	Disapproved
S. 7193	Disapproved
S. 8064-A	Approved
S. 8582-C	Disapproved
S. 9208-A	No Action*
S. 9383-A	No Action*
A. 19-A	Approved (reversing prior position of the Committee)
A. 323-C	Approved
A. 1106	Approved
A. 2824	Disapproved
A. 3305-A	Disapproved
A. 3957	Approved
A. 3959	Disapproved
A. 4705-A	Disapproved

We should have proofs of these reports later this week, and shall forward them to you.

\* Because of Disapproval of S. 8582-C

In addition, the Association's Committee on Labor and Social Security plans to submit a letter on A. 1491, which will not be available until next week since that committee wishes to give the bill full consideration. If it fits your schedule, we would appreciate a postponement in your action until the Association's letter on A. 1491 is received.

Very truly yours,



Chairman

Hon. Robert R. Douglass  
Executive Chamber  
State Capitol  
Albany, New York 12224

cc: Michael Whiteman, Esq.  
First Assistant Counsel

64

6612

S. 8582-C

The Association of the Bar of the City of New York  
Committee on Housing and Urban Development

No. 140

S. 8582-C

MR. BRYDGES

(30-day Bill)

AN ACT to amend the public authorities law and the tax law in relation to providing increased availability of residential mortgage funds and to establish state of New York mortgage agency, and making an appropriation therefor.

**The bill is disapproved**

S. 9208-A

MR. BRYDGES

(30-day Bill)

AN ACT to amend the public authorities law, in relation to the functions, powers and duties of the state of New York mortgage agency.

**The bill is approved**

S. 9383-A

MR. BRYDGES

(30-day Bill)

AN ACT to amend the public authorities law, in relation to the functions, powers and duties of the state of New York mortgage agency.

**The bill is approved**

S. 8582-C

We disapprove the bill because of its dubious constitutionality and because we believe that any funds

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raised by a state agency should be devoted to the financing of low income housing as defined by law.

The bill, to take effect immediately, would add Title 17, "State of New York Mortgage Agency Act" (the "Act"), to Article 8 of the Public Authorities Law and Section 190 to the Tax Law.

The bill would be amended by S. 9208-A and S. 9383-A, which correct a substantial number of provisions of the bill. For the purpose of this discussion, we will consider the bill as so amended, since without those amendments disapproval would be required on grounds other than those mentioned above.

Section 2401 of the Act (references to sections unless otherwise stated are to those of the Act) contains extensive legislative findings, among others, that there exists throughout the State a seriously inadequate supply of safe and sanitary dwelling accommodations, including accommodations for persons and families of low income; that there is a critical shortage of funds in private banking channels available for residential mortgages, that the drastic reduction in residential construction starts has caused a condition of substantial unemployment and under-employment in the construction industry, that increased availability of financing for residential mortgages is required to spur new housing starts, that the need for increased funds for residential mortgages cannot be met by the unaided operation of private enterprises and that the continuation of those conditions contributes to the persistence of slums and blight. To alleviate those conditions which are contrary to the public health, safety and general welfare and which constitute a public emergency, it is found that a corporate governmental agency, the



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"State of New York Mortgage Agency" (the "Agency"), should be created which, through the issuance of bonds to the private investment public, may purchase existing mortgages from banks within the State and direct the proceeds from the liquidated investment "into new mortgages on residential real property for family units."

We note that the Act, contrary to the legislative findings, does not limit the sale of Agency bonds and notes to private investors since Section 2406(5) authorizes their sale to the comptroller with the approval of the budget director. We further note that the legislative findings, and Section 2405(3), do not require the investment in new mortgages on residential real property for family units of persons of low income as defined by law. See Constitution Art. VXIII § 1.

We assume the legislative findings to be correct. See *I.L.F.Y. Co. v. State Housing Rent Commission*, 10 N.Y.2d 263, 270; 219 N.Y.S.2d 249, 253; 176 N.E.2d 822, 826 (1961), *appeal dismissed* 369 U.S. 795 (1962).

Section 2403(1) provides that the Agency will be a corporate governmental agency of the State, constituting a political subdivision and public benefit corporation, and that its membership shall consist of five directors, the superintendent of banks, the comptroller or his appointee, and three directors to be appointed by the Governor with the advice and consent of the Senate.

Section 2404 confers extensive powers on the Agency, *inter alia*, the power to acquire mortgages owned by banks, to enter into advance commitments for such purchases, to borrow money and to issue

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negotiable bonds with maturity not in excess of 30 years and notes with a maturity not in excess of seven years, §§ 2404(7), (11); 2406(4).

The Agency is directed to purchase mortgages from banks at a purchase price equal to the unpaid principal balance thereof discounted to maturity by such factor as will yield to the Agency the average net interest cost per annum, expressed as a percentage, on the bonds issued for the purpose of purchasing the mortgage plus such percentage, not in excess of  $\frac{1}{2}$  of 1%, as the Agency shall determine (such average net income cost plus such percentage are labelled the "discount rate"). §2405(2). The effect of this provision is that in every case in which the interest rate on the purchased mortgage is lower than the discount rate the purchase price will be less than the principal discounted at the mortgage interest rate and that the selling bank will sustain a loss, unless it has purchased the mortgage at a larger discount than the discount rate.

We note that the interest rate on Agency notes is omitted from the computation of the discount rate. See also a similar omission in Section 2401(8), relating to temporary investment of proceeds from sale of bonds and notes, and in Section 2406(6), relating to refunding bonds. We do not express any opinion whether or not by reason of that omission or for any other reason there may be a question whether, by reason of such omission, the bonds or notes of the Agency may constitute arbitrage bonds not exempt from Federal income taxes. Int. Rev. Code § 103(d).

As a condition of purchase of mortgages from banks, the Agency must require that the banks, with-

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in 30 days of receipt of the purchase price, enter into written commitments to loan, and within a period approved by the Agency actually loan, an amount equal to the entire purchase price on new mortgages within the State having a maturity of not less than 20 years. Mortgages on multiple dwellings satisfy the reinvestment requirement only if the borrower is a corporation and if they are approved by the Agency. If the bonding resolution so requires, approval "may" (obviously meaning "shall") be refused, and in addition, such a commitment on a multiple dwelling shall not be approved if the approval would increase the total dollar amount of such approved commitments in excess of 40% of the total purchase price of all mortgages theretofore purchased by the Agency pursuant to Section 2405. Since the limitation on multiple dwelling mortgages applies, apparently, in the aggregate and not on a bank to bank basis, it may be difficult to administer and may operate erratically. More important in our view, however, is that there is no requirement for investment in mortgages on housing for low income families, e.g., those eligible for Federal interest subsidies under Section 235 (homeownership program) or Section 236 (rental program) of the National Housing Act or as defined by New York law.

As noted above, a selling bank will ordinarily sustain a loss on a sale of a mortgage. To induce the bank to sell, Section 2405(4) authorizes banks to charge to individual borrowers interest on the replacement mortgage in excess of the maximum rate fixed by Section 5-501 of the General Obligations Law (commonly called the usury rate) up to a rate

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equal to the discount rate plus an interest differential, as determined by the agency, but not in excess of 1% per annum. In the case of corporate borrowers the interest on the replacement mortgage shall not be substantially lower than the interest rate charged by banks at the time of commitment on comparable new mortgage loans. Each bank shall pay over to the New York State Housing Finance Agency for deposit in its low-rent-lease-account maintained under the capital grants program, Private Housing Finance Law § 44-a(4), an amount equal to the difference between (a) the total amount of interest (and charges treated as interest) on replacement mortgages made to individual and corporate borrowers, and (b) the total amount of interest which such mortgages would have yielded if the interest thereon had been at the discount rate plus the interest differential. The effect of that provision seems to discourage replacement mortgage loans to corporate borrowers, since they are the only borrowers not limited by the usury rate, and to channel more funds into the individual home market.

Section 2405(7) contains provisions adequate to assure the Agency that the principal amount of the mortgage purchased is due and outstanding, but does not provide for warranty by a selling bank of the collectibility of any mortgage sold.

Recording of the assignment of a purchased mortgage is not required, and indeed, the Act contemplates servicing of a sold mortgage by the bank, for which it will be compensated by a tax credit. § 2405(9) and Tax Law § 191, added by Section 3 of the bill.

When the Agency finds that there is an adequate

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supply of funds for mortgages in regular banking channels it shall discontinue the purchase of mortgages. § 2405(10).

Section 2406 of the Act authorizes the Agency to issue its negotiable bonds and notes in such principal amounts as, in the opinion of the Agency, shall be necessary to provide sufficient funds for achieving the corporate purposes of the Agency including the purchase of mortgage loans from banks, payments of interest on its bonds and notes, establishment of reserves to secure such bonds and notes, and all its other expenditures, except operating expenditures.

Bonds and notes may be secured by a lien on all or any part of the monies or properties held by the Agency or of any monies held by others for the Agency. § 2406(8). The bonds and notes may then be revenue bonds which may be to a large extent self-liquidating.

Section 2407(1) authorizes the issuance of bonds and notes in the aggregate principal amount of \$750,000,000, excluding refunding bonds and notes.

Section 2408(1) authorizes, but does not require, the creation of a debt service reserve fund into which, among other funds, monies appropriated by the State only for the purpose of such fund may be paid.

In order to assure the continued operation and solvency of the Agency, Section 2408(2) provides that "there shall be annually apportioned and paid to the Agency such sum, if any, as shall be certified by the chairman of the Agency to the Governor and director of the budget . . . as necessary to restore the reserve in any debt service reserve fund to an amount not in excess of the principal and interest

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due in the next twelve months." If no such fund has been established and the agency determines that it will not have sufficient funds to pay principal and interest to become due in the next calendar year, the Agency shall certify the amount of the deficit to the Governor and the budget director. The amount so certified "shall be apportioned and paid to the Agency" for deposit in such fund as it may establish.

Section 2409 contains provisions relating to remedies of bondholders and noteholders. Section 2410 provides that the bonds, notes and other obligations of the Agency shall not be a debt of the State or of any municipality. Sections 2411 to 2423 contain provisions similar to those of Sections 48, 50 through 59 of the Private Housing Finance Law relating to the State Housing Finance Agency.

Section 3 of the bill provides that each bank which has contracted with the Agency for servicing of purchased mortgages shall receive a credit applicable towards the tax due under Tax Law Articles 9-b and 9-c equal to  $\frac{1}{4}$  of 1% of the total average unpaid balance of serviced mortgages secured by one and two-family dwellings and  $\frac{1}{10}$  of 1% of the total average unpaid balance of serviced mortgages secured by multiple dwellings.

Section 8 of Article VII of the Constitution prohibits gifts and loans in aid of any private corporation or association, or private undertaking, with certain exceptions none of which is applicable here. Section 1 of Article XVIII engrafts further exceptions, as far as relevant, by authorizing the legislature to provide for low rent housing and the clearance, reconstruction and rehabilitation of substandard and insanitary areas. It is well established that a public

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purpose is not sufficient to override the restriction of the gift and loan provisions of Article VII. See, *e.g.*, *People v. Westchester County National Bank*, 231 N.Y. 465, 475, 132 N.E. 241, (1921); see also report of the Temporary State Commission on the Constitutional Convention held in 1967, pp. 107, *et seq.* and report of the Special Committee on the Constitutional Convention, State Finance, Taxation and Housing and Community Development of this Association (April 1967), pp. 13 *et seq.* The Act does not require reinvestment of the purchase price of mortgages in (a) low income housing, or (b) new housing. See § 2405(3). The Act, therefore, is not restricted to increasing the supply of low income housing or furnishing employment in the construction of new housing or rehabilitation of old housing. The Act, thus, is not restricted to remedying the legislative findings in that regard.

Moreover, it is evident that the discount rate based on the sale of tax-exempt bonds will be lower than the rate at which existing mortgages could be sold under present conditions on the open market. Such differential might be construed to constitute a gift contrary to the provisions of Section 1 of Article VIII, *supra*.

We believe, therefore, that the Act would be unconstitutional if it had provided for the State to do directly the undertakings the Act would assign to the State of New York Mortgage Agency. The question is whether the State may undertake indirectly what it cannot do directly. In that connection, it should be noted that all activities of the State Private Housing Finance Agency are within the constitutional limitations and authorizations of Articles VII

The Association of the Bar of the City of New York  
Committee on Housing and Urban Development

and XVIII. Its primary function is to by-pass the approval of state debt by referendum. Const. Art. VII, § 11.

To our knowledge, there is no case that has decided the question to what extent the use of an agency of the State can circumvent constitutional limitations on the power of the State to engage in certain activities, irrespective of their desirability. We cannot predict whether the New York courts, by extension of the doctrine of *Williamsburgh Savings Bank v. State of New York*, 243 N.Y. 231, 244-249, 153 N.E. 58 (1926), would enforce the obligations to be undertaken by the State in the Private Housing Finance Law to replenish funds required by the State Private Housing Finance Agency to meet its obligation to bondholders if the legislature should fail to appropriate the necessary funds. We believe, however, that there is no constitutional inhibition on the legislature to make the annual appropriations contemplated by the Private Housing Finance Law. The same reasoning, however, does not apply to the appropriations contemplated by Section 2408(2) of the Act.

In *Massachusetts Housing Finance Agency v. New England Merchants National Bank*, — Mass. —, 249 N.E. 599 (Sup. Jud. Ct., Mass., 1969), one of the issues was whether the Massachusetts legislature could constitutionally make annual appropriations, as required by the statute, to restore to the statutory limit a reserve fund established by the Massachusetts Housing Finance Agency for the payment of principal and interest on its bonds sold to the public. The proceeds of the bonds were loaned by the agency to finance low and middle income housing. The



The Association of the Bar of the City of New York  
Committee on Housing and Urban Development

Massachusetts constitution does not contain any limitation similar to the gift and loan provisions of the New York constitution. See Massachusetts Constitution, Part 2, § 1, Art. IV. In upholding the statute because it provided in part for low income housing, the Court said, *inter alia*:

“ . . . any appropriation in fact made would necessarily have some aspect of a ‘gratuity’ to [the bondholders] [citations omitted].” 249 N.E. 2d at 609.

We believe that any appropriations made by the legislature under Section 2408(2) may constitute such a gratuity and a gift not made for any purpose authorized by Articles VII and XVIII of the Constitution and would, to that extent, be of dubious constitutional validity.

As noted above, the Act is not restricted to aiding low income housing, which by statute may include housing for persons of middle income in the colloquial sense, or slum clearance, nor does it assure the construction of new housing or the rehabilitation of decayed housing of any category with a resulting increase in employment. While we are not unmindful of the shortages in mortgage funds for mortgagors who may not qualify for low or middle income housing, we believe that under present conditions and in view of the great need for housing of all kinds and the rehabilitation of old housing in New York City and elsewhere in the state, funds should primarily be made available for those purposes.

For the reasons stated, the bill is disapproved.

S. 9208-A and S. 9383-A

If S. 8582-C, which we disapprove, were to be enacted, the amendments provided by S. 9208-A and

**The Association of the Bar of the City of New York  
Committee on Housing and Urban Development**

**S. 9383-A would be essential to correct deficiencies  
in S. 8582-C.**

**For the reasons stated, the bills are approved.**

**This report was prepared by the Association's Committee on  
Housing and Urban Development.**



SAVINGS BANKS ASSOCIATION OF NEW YORK STATE

200 PARK AVENUE · NEW YORK, N. Y. 10017 · AREA CODE 212 697-0255

LAWRENCE U. COSTIGLIO  
VICE PRESIDENT

April 22, 1970

Honorable Robert R. Douglass  
Executive Chamber  
State Capitol  
Albany, New York

Re: Senate Intro. 8582-C  
An Act to Amend the Public Authorities  
Law and the Tax Law in Relation to  
Providing Increased Availability of  
Residential Mortgage Funds and to  
Establish State of New York Mortgage  
Agency, and Making An Appropriation  
Therefor  

---

and  
Senate Intro. 9208-A  
An Act to amend the Public Authorities  
Law, In Relation to the Functions, Powers  
And Duties of the State of New York  
Mortgage Agency

Dear Mr. Douglass:

You have asked for the comments of this Association on the above bills which are before the Governor for executive action.

These bills provide for the establishment of a New York mortgage agency for the purpose of purchasing mortgages from banking organizations, provided that the proceeds of such purchases are re-invested by such institutions in residential mortgages pursuant to the provisions of the bills.

The savings banks of New York State, all of which are members of this Association, are the principal residential mortgage lenders in this state and as such have constantly supported any measure that can reasonably be expected to contribute to the availability of residential mortgage credit for the people of the state.

SAVINGS BANKS ASSOCIATION  
OF NEW YORK STATE

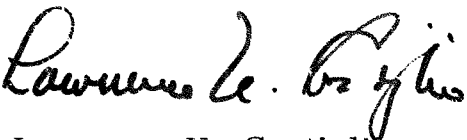
Honorable Robert R. Douglass

-2-

April 22, 1970

Accordingly, this Association supports these two bills and recommends that they be enacted into law.

Sincerely yours,



Lawrence U. Costiglio

LUC:cs



WILLIAM H. BODINE  
PRESIDENT

# Savings Association League

OF NEW YORK STATE

700 WHITE PLAINS ROAD, SCARSDALE, NEW YORK 10583  
TEL: 914 472-3500

April 22, 1970

Hon. Robert R. Douglass  
Executive Chamber  
State Capitol  
Albany, New York 12224

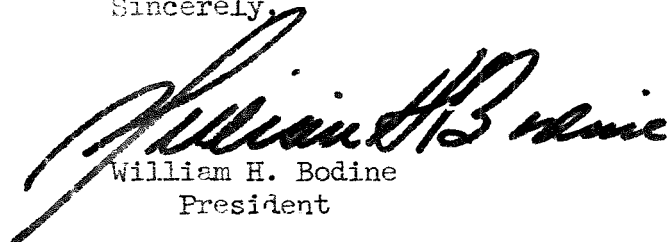
58502C  
Re: 8582-C, 9208-A - Establishing  
the State of New York Mortgage  
Agency and prescribing its  
powers and duties

Dear Mr. Douglas:

We commend the authors of the subject bills for their efforts in initiating a State operated secondary mortgage market facility. Never in the history of the history of the home lending business in the State has such a facility been more needed and we certainly hope that the administration will act promptly in carrying out the intent of these bills.

This organization gave its full support to these measures and urge that the Governor give his approval.

Sincerely,

  
William H. Bodine  
President

76

# NEW YORK STATE BANKERS ASSOCIATION

405 LEXINGTON AVE.



NEW YORK, N. Y. 10017

TELEPHONE  
(212)  
986-5063

April 30, 1970

5-8582-C

Hon. Robert R. Douglass  
Executive Chamber  
State Capitol  
Albany, New York 12224

## MEMORANDUM

IN  
SUPPORT  
OF

SENATE 8582-C - By Senator Brydges

Re: An act to amend the public authorities law and the tax law in relation to providing increased availability of residential mortgage funds and to establish state of New York mortgage agency, and making an appropriation therefor.

AND

SENATE 9028-A - By Senate Rules Committee  
(at the request of Senator Brydges)

AND

SENATE 9383-A - By Senate Rules Committee  
(at the request of Senator Brydges)

(NOTE: The above two bills are "chapter amendments" to Senate 8582-C)

This memorandum is submitted by the New York State Bankers Association on behalf of the commercial banks of the State of New York (both state and national).

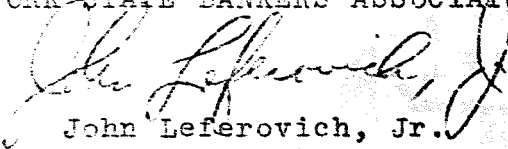
The above bills would create a corporate governmental agency to be known as the "State of New York Mortgage Agency" which, through issuance of bonds and notes to the private investing public, may purchase existing mortgages from banks within the state and direct the proceeds from the liquidated mortgage investments into new mortgages on residential real property for family units. The purpose of the bill is to relieve the critical shortage of funds in private banking channels available for residential mortgages in the state.

(See Over)

This Association reaffirms its position, first taken when the bill (S.8582-C) was introduced in the legislature, of support in principle of these bills.

We further hope that, should the bills be signed into law, the State of New York Mortgage Agency will be quickly formed and that it will act promptly in carrying out the intent and purposes of the bills.

Respectfully submitted,  
NEW YORK STATE BANKERS ASSOCIATION

  
John Leferovich, Jr.  
Counsel

C. 612

5.15.70

LEWIS COUNTY TRUST COMPANY  
LOWVILLE, NEW YORK 13367

MILLER B. MORAN  
PRESIDENT

LAS

May 7, 1970

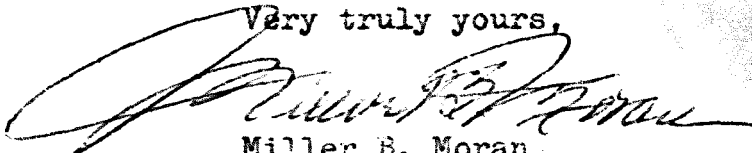
Council to the Gouvernor  
State Capital  
Albany, New York 12224

Dear Sir:

This bank is opposed to Assembly #3453A, by  
Assemblyman Chananau; also Assembly #1315A, by  
Assemblyman Ramos.

We do support Senate #85820, by Senator Brydges,  
amended by the Rules Committee of Senate #9028A and  
Senate #9383A.

Very truly yours,

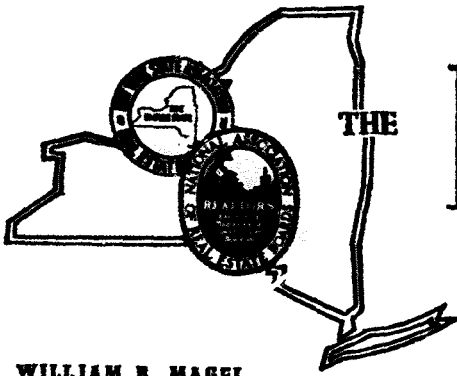


Miller B. Moran  
President

MBM:cam

76





# THE New York State

ASSOCIATION OF REAL ESTATE BOARDS, INC.

11 NORTH PEARL STREET • ALBANY, NEW YORK 12207 (518) 465-4588

**WILLIAM R. MAGEL**  
Executive Vice President

April 28th, 1970

The Hon. Robert R. Douglass  
Counsel to the Governor  
Executive Chamber  
State Capitol  
Albany, New York 12224

Re: S. 8582 - Brydges  
S. 9208 - Rules  
S. 9383 - Rules  
S. 9424 - Rules

Dear Mr. Douglass:

The above bills create the New York State Mortgage Agency. Our industry desperately needs the legislation and urges their approval.

Earlier this year we provided a sponsor of the bill with letters from many of our local boards throughout the State. In every area the report was the same -- listings up, sales down drastically.

The root cause of this problem is the unavailability of residential mortgage money. The home owners are unable to sell their homes because the prospective purchasers cannot obtain financing. This has caused doubling up in certain areas and substantial losses to individuals who were forced to sell their homes in this unfavorable economic climate.

Naturally, the reduction in sales has had a result on our industry; many of our brokers and salesmen found themselves in a difficult economic strait. Some, in fact, found it necessary to temporarily withdraw from the business.

New York State Association of Real Estate Boards, Inc.

The Hon. Robert R. Douglass

April 28th, 1970

Page 2.

However, much more important than the impact on our industry is the wide-spread impact on the public of the State of New York. The housing requirements of our nation and, indeed, our State are one of the foremost concerns of everyone and the peaks and valleys which have occurred in the mortgage fund market in recent years are, by a large measure, responsible. This new agency will provide an overall stability in our state that is desperately needed to avoid the reoccurrence of the current catastrophe.

We recommend the approval of these bills.

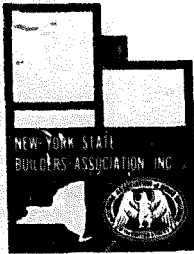
Sincerely,



William R. Magel  
Executive Vice-President

WRM:rhr

S-8582



# NEW YORK STATE BUILDERS ASSOCIATION, INC.

(Affiliated with the National Association of Home Builders)

Executive Office 41 State Street, Albany, New York 12207/Telephone: Code 518 465-2492

March 30, 1970

President  
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Rochester

1st Vice President  
**Barnett Maller**  
Long Island

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**Matthew Kidawski**  
Niagara Frontier

3rd Vice President  
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**Sid Marcus**  
Rockland

Alt. National Director  
**Elton L. Finch**  
Southern Tier

National Representative  
**Herbert Z. Gold**  
Long Island

Executive Vice President  
**Frank D. Cerabone**

Dear Fellow New Yorker:                      Re: S. 8582 (Brydges)

There exists in New York State today a situation that grows in complexity and urgency. Housing production has been impaired by the National Monetary Emergency. All efforts to control inflation have had devastating effects upon our industry and its ability to produce and supply housing to our citizens. The housing that is available is only available under near impossible mortgage terms. The major mortgage lenders of the State have not had either the ability or the inclination to provide home mortgages in any volume for the past twelve (12) months.

The major problem has been the instability of the mortgage market. This has not been a new condition. From time to time the market takes deep downturns and then reaches record peaks. The builder is buffeted from one economic extreme to the other. This latest crunch has brought him on his knees. The one that suffers the most is the person in need of housing. Whether he be buyer or renter. The cost of the money and its terms has direct effect upon his ability to rent or purchase.

For many years this industry has offered a plea for some method of reaching reasonable stability. Now the legislation proposed by Senator Earl W. Brydges (S. 8582) answers that plea. By making it possible for mortgage lenders to re-cycle their money and replenish the money market.

The legislation would create the State of New York Mortgage Authority. This proposal has come to be known as the Sonnie Mae proposal. The name stems from Fannie Mae, the Federal National Mortgage Agency. Fannie Mae has been a key factor in the ability of the national mortgage lending industry

## CONSTITUENT ASSOCIATIONS

ALBANY AREA BUILDERS ASSN., INC.  
Albany

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NEW YORK CITY BUILDERS ASSN., INC.  
Staten Island

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Niagara Falls

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Binghamton

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and the housing industry to keep functioning at least at minimums throughout the current crisis. Sonnie Mae would do the same for New York State.

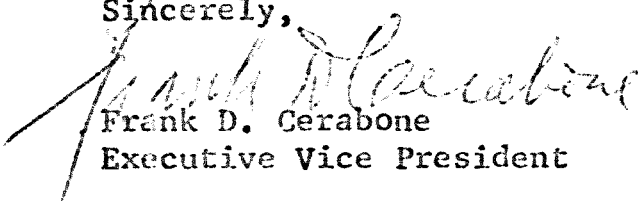
The ability of a lending institution to relieve itself of the burden of low yield mortgages, coupled with the ability to re-invest at improved rates of return would considerably enhance the residential mortgage as an investment. It would aid the banks and, in turn, this benefit would accrue to the building industry and the homeseeker. Any pressure that could be taken off the private housing market will reflect in sound benefits to all of the people.

The mechanics of the legislation have been carefully worked out by the Senator and his aides, and details may be found in the enclosed Memorandum.

This Association wholeheartedly endorses this proposal and respectfully requests your support in any way possible to assist its successful passage.

Thank you. Kind personal regards.

Sincerely,

  
Frank D. Cerabone  
Executive Vice President

FDC:g

Enclosure: Memorandum (S. 8582)

M E M O R A N D U M

RE: AN ACT to amend the public authorities law and the tax law in relation to providing increased availability of residential mortgage funds and to establish State of New York mortgage agency, and making an appropriation therefor.

Purpose of the Bill:

To create a State of New York mortgage agency for the purpose of increasing the availability of funds for residential mortgages in the state.

Summary of Provisions of the Bill:

This bill creates the State of New York mortgage agency, a public authority authorized to sell bonds, which should be tax exempt, up to \$750 million. The proceeds of the bonds will be used to purchase mortgages from banks within the state. The purchase price will be computed by discounting the mortgages at the same rate of interest as the agency pays on its bonds. As a condition of the purchase, the selling banks will be obligated to reinvest the proceeds in new mortgages within a time period set by the agency. The new mortgages may be on one- and two-family houses and multiple dwellings. The interest rate payable by individuals shall be not more than three-quarters of one percent higher than the rate of interest payable by the agency on its bonds. The agency should require only a minimal staff. An appropriation of \$400,000 is made to the agency.

To compute the purchase price of a mortgage to be acquired by the agency, its unpaid principal balance is discounted at the same rate of interest as the agency pays on its bonds. Thus, if the agency were to bond at seven and one-half percent, it would purchase a mortgage having an unpaid principal balance of \$10,000, an interest rate of five percent and a remaining term of ten years for \$8,935. The regular, five percent interest payments on the acquired mortgages, plus the \$1,165 accretion to principal (the difference between \$10,000 and \$8,935) would result in a yield to the agency of seven and one-half percent on its investment of \$8,935. If the same mortgage yielded seven and one-half percent interest, the agency would pay \$10,000. In no event will the agency pay more than the unpaid principal balance of the mortgage.

The rate of discount set by the bill is mandated by the 1969 Federal Tax Reform Act, which denies federal income tax exemption to state bonds the proceeds of which are invested in obligations yielding a materially higher rate than the rate of interest paid on the bonds. By setting the discount rate at the

same rate at which the agency bonds, interest on the agency's obligations should be exempt from federal income tax. Such a tax exemption is considered necessary to the success of the program.

Consonant with the legislative intent to effect an immediate impact, participating banks will be required to quickly invest the proceeds in new residential mortgages. Commitments for the new mortgages must be made within 30 days after the banks receive the funds; the loans must be consummated within such period as the agency approves.

The rate of interest payable by individuals on the new mortgages will be keyed to the agency's bonding rate. They will get the funds at three-quarters of one percent more than the agency does. Thus, if the agency pays six percent interest on its bonds, individual borrowers will pay six and three-quarter percent, even if the usual rate is seven and one-half percent. On the other hand, if the agency bonds at seven and one-quarter percent, individual borrowers will pay eight percent. A rate in excess of seven and one-half percent will be justified under these circumstances because, if the agency's bonds sell at such a high rate, money from private banking sources will be virtually unavailable. Moreover, the interest rate will still be less than the rate on funds made available by the federal government under its FHA and VA programs.

New mortgage loans to corporate borrowers for multiple dwellings will bear approximately the usual market rate of interest.<sup>1</sup> In today's market, that rate might be ten to eleven percent. The banks will have received the new money at the agency's bonding rate, e.g., between six and seven percent. In order to prevent the banks from getting a windfall and raising a "gifts and loans" problem under the state constitution, the legislation requires the bank to annually pay into the capital grant low rent assistance fund the difference between the interest it in fact receives on its new mortgages and the interest it would have received if the interest had been computed at the agency's bonding rate plus three-quarters of one percent. The capital grant low rent assistance fund subsidizes the rents of low income families living in middle income apartments.<sup>2</sup> Thus, the legislation should enable a substantial number of low income families to occupy units in middle income apartments.

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<sup>1</sup> To prevent developers from receiving a "windfall" and an unfair competitive advantage in the form of "cheap money", banks are required to lend to corporate borrowers at substantially the same rate they are charging on comparable mortgages.

<sup>2</sup> Under the Private Housing Finance Law, up to 20% of a Mitchell-Lama project may be leased by a local housing agency and subleased to low income families whose rents are subsidized by the capital grant low rent assistance fund.

The inducement to banks to participate in the program is set by the bill at three-quarters of one percent of the discounted unpaid principal balance of the mortgages sold to the agency. This amount must cover the costs of selling all the old mortgages and of making the new ones, as well as inducing the bank to make new mortgage money available.

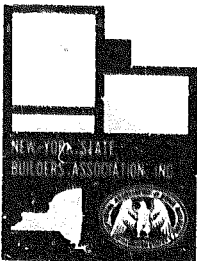
The agency is designed to require only a minimal staff. It is expected that it will acquire fairly large blocks of mortgages covered by comprehensive warranties by the selling banks. Therefore, no detailed examination of the individual mortgage, mortgagor or security is either necessary or envisioned. Mortgages acquired by the agency will continue to be serviced by the selling banks which will receive a credit against their franchise tax equal to the value of the services rendered. Mortgagors whose mortgages have been transferred will not be affected in any way; indeed they will not be aware of the transfer.

Statement in Support of the Bill:

Privately financed construction of one- and two-family residences and privately developed multiple dwellings has come to a virtual standstill in New York. The absence of new housing starts, coupled with the inadequate supply of existing units, has substantially increased the pressure on the already overtaxed housing market. Housing is in extremely short supply; the price of those units which are available has been driven upward by the seller's market. In addition, there has been relatively little turnover of existing units. This lack of new construction and of movement within the housing market is threatening to have serious consequences, not only on the construction industry, but on the State's economy generally.

One major cause of this housing freeze has been the unavailability of private financing. This condition, in turn, results from the fact that banks lack currently available funds to invest in mortgages. To meet this rapidly developing crisis, the new agency is designed to free up to \$750 million of banks' funds for new residential mortgages.

It is the legislative intent that the new agency will be established, operating and issuing its bonds as quickly as possible. It is expected that by Spring 1970 it will be purchasing existing mortgages from banks within the state.



# NEW YORK STATE BUILDERS ASSOCIATION, INC.

(Affiliated with the National Association of Home Builders)

Executive Office 41 State Street, Albany, New York 12207/Telephone: Code 518 465-2492

5-8582-C

May 4, 1970

President  
Leon Halperin  
Rochester

1st Vice President  
Barnett Mailer  
Long Island

2nd Vice President  
Matthew Kidawski  
Niagara Frontier

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A't. National Director  
Elliott L. Finch  
Southern Tier

National Representative  
Herbert Z. Gold  
Long Island

Executive Vice President  
Frank D. Cerabone

Legislative Counsel  
DeGraff, Foy,  
Conway & Holt-Harris

Honorable Robert R. Douglass  
Counsel to the Governor  
Executive Chamber  
The State Capitol  
Albany, N.Y. 12224

Re: S.8582-C (Brydges)  
S.9208-A (Rules)

Dear Mr. Douglass:

The subject bills would authorize the creation of a state "Fanny Mae."

In the past five years this industry has experienced two severe recessions. Our business requires long term financial commitments to function properly. Until this sine quo non is obtained, none of the varied and time consuming steps necessary to create a housing development can be initiated.

The provisions of this bill are well understood by your office. The need for the legislation might require further development. This agency, once it is in operation, will be able to pump money into the housing industry as the need arises. This is important because it keeps builders in business and producing residential units which all statistics show are in short supply. We will be providing a steady and ever increasing supply of housing instead of sporadic bursts and then period of almost total inactivity.

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## CONSTITUENT ASSOCIATIONS

ALBANY AREA BUILDERS ASSN., INC.  
Albany

HOME BUILDERS ASSN. OF CENTRAL NEW YORK  
Syracuse

HOME BUILDERS ASSN. OF FINGER LAKES  
Elmira

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NEW YORK CITY BUILDERS ASSN., INC.  
Staten Island

NIAGARA COUNTY BUILDERS ASSN., INC.  
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HOME BUILDERS ASSN. OF NORTHERN NEW YORK  
Glens Falls

ROCHESTER HOME BUILDERS ASSN.  
Rochester

ROCKLAND COUNTY BUILDERS ASSN., INC.  
Spring Valley

HOME BUILDERS ASSN. OF SCHENECTADY  
Schenectady

SOUTHERN TIER HOME BUILDERS ASSN.  
Binghamton



We strongly recommend the approval of these measures.

Respectfully submitted,  
New York State Builders Association

By *Barnett Mailer*  
Barnett Mailer, Legislative Chairman

DeGraff, Foy, Conway and Holt-Harris  
Legislative Counsel

By *Frank J. Lasch*  
Frank J. Lasch, Associate Counsel

**CITIZENS UNION** Founded 1897  
**OF THE CITY OF NEW YORK.**

**A UNION OF CITIZENS,  
WITHOUT REGARD TO PARTY,  
FOR THE PURPOSE OF  
SECURING THE HONEST AND  
EFFICIENT GOVERNMENT  
OF THE CITY OF NEW YORK.**



5 Beekman Street, New York 10038 (BAirclay 7-0342)

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Walter Frank      Peyton H. Moss      Edward R. Whittingham  
S. William Green      Louis E. Yavner

May 18, 1970

Honorable Nelson A. Rockefeller  
State Capitol  
Albany, New York 12224

Re: S. 8582-C

Dear Governor Rockefeller:

Citizens Union urges you to veto Senate Bill 8582-C which would establish a state agency to purchase mortgages from banks. Although several states have enacted similar measures, practical considerations have prevented all states from implementing them. The measure contains inadequate specification of standards and priorities and would permit the banks themselves to determine what part of their mortgage holdings they wished to impose on the state. The need for a state sponsored method of channelling mortgage funds into ghetto neighborhoods has long been recognized, but this measure would channel funds only into the better neighborhoods. Signing of this measure would justify the cynical claim that the state will not help ghetto residents obtain better housing but, once the upper middle-class feels the pinch of tight money, the state rushes to the rescue. Financing of this project which is not a proper state function by an exempt bond issue, would have an adverse and undesirable impact upon the exempt bond market.

Very truly yours,

*John M. Burns, III*

John M. Burns, III, Chairman  
Citizens Union Legislation Committee



Helps troubled families help themselves  
counseling, community action, research  
nonprofit, nonsectarian, founded 1846

2856C

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May 5, 1970

Hon. Robert R. Douglass  
Executive Chamber  
State Capitol  
Albany, New York 12224

Re: S 8582C                      S 9208  
Mr. Brydges                      Rules  
APPROVED

Dear Mr. Douglass:

We note that the above bills creating the State of New York Mortgage Agency are before the Governor for executive action. We have, unfortunately, not received a copy of S 9424 amending the act which is also before the Governor. Our comments are therefore confined to the two bills listed above.

We believe the Agency would provide some incentive for new mortgage lending by enabling banks to dispose of existing low-interest mortgages.

We are concerned, however, that only 40 per cent of the Agency's funds could be used for mortgages on multiple dwellings and that the Agency could not purchase Mitchell-Lama mortgages. We hope that the law will be amended next session.

In spite of our reservations, we find the creation of this Agency a step forward and urge that the Governor sign the bills.

Sincerely yours,

Byard Williams, M.D.  
Chairman  
Committee on Housing and  
Urban Development

BW:sp



STATE OF NEW YORK  
EXECUTIVE CHAMBER  
ALBANY 12224

MAY 12 1970

MEMORANDUM filed with the following bills:

Senate Bill Number 8582-C, entitled:

#83  
Chap 612

"AN ACT to amend the public authorities law and the tax law in relation to providing increased availability of residential mortgage funds and to establish state of New York mortgage agency, and making an appropriation therefor"

Senate Bill Number 9208-A, entitled:

#84  
Chap 613

"AN ACT to amend the public authorities law, in relation to the functions, powers and duties of the state of New York mortgage agency"

Senate Bill Number 9383-A, entitled:

#85  
Chap 614

"AN ACT to amend the public authorities law, in relation to the functions, powers and duties of the state of New York mortgage agency"

A P P R O V E D

These bills will establish the New York State Mortgage Agency as a public benefit corporation to join, with other efforts which I have suggested, to meet the crisis in residential mortgage financing now faced in our State as a result of the long inflationary period in which we find ourselves.

Under this program, proposed and developed by Senate Majority Leader Earl W. Brydges, the agency will be authorized to sell up to \$750,000,000 of bonds and use the proceeds for residential mortgages in the State. The proceeds will be used to purchase existing mortgages from banking institutions with the requirement that the purchase price be reloaned on residential mortgages.

As a result of the tight money situation, many people of adequate financial responsibility have been unable to purchase needed housing facilities and many wishing to sell their homes have found buyers few and far between. Furthermore, it has recently been reported in a recent study of housing submitted to the City Council in New York City that the shortage of money may result in a crisis in refinancing many of the sound, older multiple dwellings. Moreover, there is no question that additional sound housing is needed in the State and that without appropriate financing, its construction cannot be expected.

In addition to offering relief from the current crisis situation, the Agency should assist in avoiding future violent cycles in the home mortgage market and the home building industry.

The benefits of the low rates at which bonds of the agency are expected to be sold, would permit loans to be made at market interest rates, while still providing funds, operating expenses of the agency, and an amount, fixed by the agency, not to exceed one percent interest, to induce banks to participate in the program. Any additional differential between the bond price and the market rate of interest would be required to be paid over to the Capital Low Rent Assistance Fund to be used in the State's

program of providing housing in middle-income coops for low-income individuals. The bill contains provisions adequate to insure that banks and builders receive only enough benefits to induce their participation in the Agency's program.

These bills represent an attempt to solve one of our most pressing problems. It is my sincere hope that the Agency will be able to commence its operations very soon, after receiving the necessary Federal clearances and tax rulings, to enable it to attack the housing needs of the State. I compliment Senator Brydges and Speaker Duryea for their cooperative and forthright effort to solve this most difficult problem.

The bills are approved.

/s/ NELSON A. ROCKEFELLER