

LETTER OF TRANSMITTAL

Local governments, school districts, fire districts and boards of cooperative educational services (“BOCES”) throughout New York State have suffered and are expected to suffer substantial declines in revenues as a result of the COVID-19 pandemic and actions taken to slow the spread of the virus. The fiscal impact upon the finances of these entities is unprecedented and will likely require state legislative action so that local governments, school districts, fire districts and BOCES can continue to fund critical public services and maintain their infrastructure.

Accordingly, we have prepared and send along herewith a draft of legislation that would amend existing law to authorize the issuance of certain obligations by municipalities, school districts, fire districts and BOCES to provide both short-term financing for the substantial revenue shortfalls faced by these entities, as well as a long-term solution that will permit, in most cases, such entities to amortize the deficits created by such revenue shortfalls over a period of years. We are also sending along a Memorandum in Support, which explains and provides justification for the new legislation.

Members of each of the firms, as listed below, have worked collaboratively on this legislation. All of us concur that it provides a critical financing remedy that addresses certain financial concerns anticipated by our clients across New York State because of the COVID-19 pandemic. The draft legislation is similar to previous legislative acts responsive to financial emergencies.

We would encourage representatives of local governments, school districts, fire districts and BOCES to discuss any questions or concerns about this draft legislation with their respective Bond Counsel. We would also invite representatives of affected state and local associations to share comments about such draft legislation with any of the individuals listed below.

Thank you

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AN ACT to amend section 29.20 of the local finance law relating to authorizing the issuance by municipalities, school districts and district corporations of deficiency notes to finance deficiencies in any fund or funds resulting from any unforeseeable public emergency and the issuance of bonds for the purpose of liquidating budget deficits resulting from such deficiencies

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph a. of section 29.20 of the local finance law, **as added by chapter 386 of the laws of 2010**, is amended to read as follows:

Any municipality, school district or district corporation may issue deficiency notes during any fiscal year to finance a deficiency in any fund or funds arising from revenues being less than the amount estimated in the budget for such current fiscal year **and/or the immediately preceding fiscal year. Such notes may be issued to finance a deficiency resulting from any unforeseeable public emergency occurring during such year and/or the immediately preceding year such as epidemic, conflagration, riot, storm, flood, earthquake or other unusual peril to the lives and property of the citizens of such unit of government in such amount as the finance board shall determine to be necessary, but not to exceed the amount of such deficiency as certified by the chief fiscal officer of such municipality, school district or district corporation.** Such notes may be issued to finance such deficiency resulting from any cause other than an **unforeseeable public emergency** in such amount as the finance board shall determine to be necessary, but not to exceed five per centum of the amount of the annual budget of such municipality, school district or district corporation.

§ 2. Paragraph b. of section 29.20 of the local finance law is amended to read as follows:

Deficiency notes issued to finance a deficiency resulting from any unforeseeable public emergency pursuant to paragraph a hereof may be renewed from time to time, but such notes, including the renewals thereof, shall mature not later than the close of the fifth fiscal year succeeding the fiscal year in which such notes are issued. An annual installment shall be paid no more than two years after such deficiency note shall have been issued, and annually thereafter in an amount to be determined in accordance with the provisions of paragraph b of section 23.00 of this chapter. Deficiency notes issued to finance a deficiency from any cause other than an **unforeseeable public emergency** may be renewed from time to time, but such notes, including the renewals thereof, shall mature not later than the close of the fiscal year succeeding the fiscal year in which such notes are issued. However, such notes **issued to finance a deficiency from any other cause**, including the renewals thereof, may mature not later than the close of the second fiscal year succeeding the fiscal year in which such

notes are issued, when authorized and issued during a fiscal year at a time subsequent to the date of the adoption of the annual budget for the next succeeding fiscal year, by a municipality, school district or district corporation in which the total amount of taxes or assessments levied for a fiscal year is determined pursuant to an annual budget adopted during the fiscal year preceding such fiscal year.

§ 3. Paragraph c. of section 29.20 of the local finance law is amended to read as follows:

Deficiency notes shall be redeemed **(i)** out of the taxes or assessments levied or to be levied for the fiscal year in which they mature or out of other revenues of that fiscal year legally available for that purpose, **or (ii) from the proceeds of bonds issued pursuant to paragraph g of this section.**

§ 4. Paragraph f. of section 29.20 of the local finance law is amended to read as follows:

Any municipality, school district or district corporation which shall renew deficiency notes, **except for the renewal of such notes for the financing of a deficiency related to an unforeseen public emergency**, pursuant to the provisions of paragraph b of this section, **and [or]** which shall issue deficiency notes in two or more successive fiscal years, shall be subject to the requirements of paragraphs c, d, e and f of section 10.10 of this article for three years commencing with the fiscal year in which such notes were renewed or each second successive fiscal year in which such notes were issued.

§ 5. Section 29.20 of the local finance law is hereby amended by adding the following new paragraph g:

Any municipality, school district or district corporation which has issued deficiency notes, or renewals thereof, to finance a deficiency resulting from any unforeseeable public emergency such as epidemic, conflagration, riot, storm, flood, earthquake or other unusual peril to the lives and property of the citizens of such unit of government shall have the power to issue bonds for the purpose of liquidating the budget deficit resulting from such deficiency or redeeming any deficiency notes theretofore issued to finance said deficiency. Bonds shall not be issued until the amount of such budget deficit has been reviewed and determined by the state comptroller. Notwithstanding the provisions of any general, special or local law, neither the expenditure of money for such purpose nor bond resolutions authorizing the issuance of bonds for such purpose shall be subject to a permissive or mandatory referendum after such resolutions have been adopted by the finance board. Such municipality, school district or district corporation shall prepare a report detailing the amount and cause of such deficit and submit such report together with its independent audit report for its last completed fiscal year, if any such audit report has been or is to be prepared, and such other information as the

state comptroller may deem necessary, to the state comptroller, as well as the chairs of the senate finance committee and the assembly ways and means committee, at least thirty days prior to the issuance of any bonds pursuant to this section. Within thirty days after receiving such report, the state comptroller shall perform such reviews as may be necessary to determine the amount of such deficits and report the same to the chairs of the senate finance committee and the assembly ways and means committee, the chief fiscal officer and the finance board of such municipality, school district or district corporation. Bonds to liquidate each such deficit shall not be issued in an amount exceeding such deficit as determined by the state comptroller. If the municipality, school district or district corporation issues deficiency notes for the purpose of liquidating such deficit in an amount in excess of the amount of such deficit as determined by the state comptroller, the municipality, school district or district corporation shall, from funds other than proceeds of bonds authorized pursuant to this section, redeem such deficiency notes, at maturity or the first date such deficiency notes may be redeemed prior to maturity, in the amount by which the amount of such deficiency notes exceeds the amount of such deficit as determined by the state comptroller. It is hereby determined that the financing of the deficits hereinbefore described is a purpose of the municipality, school district or district corporation for which indebtedness may be incurred. The period of probable usefulness for the financing of such deficits, computed from the date of original issuance of such deficiency notes, is hereby determined to be five years, except if the amount of such deficit exceeds one percentum but does not exceed two per centum of the total annual budget of such municipality, school district or district for such fiscal year, ten years, and if the amount of such deficit exceeds two per centum of the total annual budget of such municipality, school district or district corporation for such fiscal year, fifteen years. Such bonds shall be general obligations of the municipality, school district or district corporation to which the faith and credit of the municipality, school district or district corporation is pledged, and the municipality, school district or district corporation shall make an annual appropriation sufficient to pay the principal of and interest on such obligations as the same shall become due.

§ 6. Section 29.20 of the local finance law is hereby amended by adding the following new paragraph h:

To facilitate the marketing of bonds authorized pursuant to this section to be issued for the purpose of liquidating a budget deficit, the municipality, school district or district corporation may, notwithstanding any limitation on the private sales of bonds provided by law and subject to the approval of the state comptroller of the terms and conditions of such sales:

1. **arrange for the underwriting of such bonds at private sale through negotiated fee or by sale of such bonds to an underwriter at a price less than the sum of par value of, and the accrued interest on, such obligations; or**
2. **arrange for the private sale of such bonds through negotiated agreement, with compensation for such sales to be provided by negotiated agreement and/or negotiated fee, if required. The cost of such underwriting or private placement shall be deemed a preliminary cost for purposes of paragraph g hereof and section 11.00 of this title.**

§ 7. Paragraph 2-c. of section 2.00 of the local finance law is amended to read as follows:

The term "board of cooperative educational services" shall mean any board of cooperative educational services, as defined in section nineteen hundred fifty of the education law, and such board shall, solely for the purpose of contracting indebtedness pursuant to sections 25.00 **and issuing deficiency notes pursuant to section 29.20** of this chapter, be deemed to be a school district.

§ 8. Paragraph b. of section 40.10 of the local finance law is amended to read as follows:

Any municipality, school district or district corporation may adopt one or more deficiency note resolutions authorizing the issuance of deficiency notes for the specific object or purpose of covering a deficiency in any fund or funds arising from revenues being less than the amount estimated in the budget for the current fiscal year **or the immediately preceding fiscal year** of the municipality, school district or district corporation.

§ 9. Section 29.20 of the local finance law is hereby amended by adding the following new paragraph i:

Section 104.10 of this chapter shall not be applicable in relation to, or as the result of, the adoption of a bond resolution authorizing the issuance of serial bonds pursuant to paragraph g hereof. The provisions of section 10.00, paragraph a of section 21.00 and any other section of this chapter, or the provisions of any general, special, charter or local law, which would restrict, limit or prohibit the issuance of such notes or bonds (except those enacted to conform with the state constitution) are, to the extent that this section is utilized by a municipality, school district or district corporation, suspended and made ineffective insofar as necessary to effectuate the purposes of this section.

§ 10. This act shall take effect immediately.

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

MEMORANDUM IN SUPPORT

TITLE OF BILL: COVID-19 Fiscal Distress Relief Act

PURPOSE OR GENERAL IDEA OF BILL: In response to the COVID 19 epidemic, economic activity has been dramatically reduced as a result of actions taken by the Federal and state governments in order to slow the spread of the virus, protect public health and conserve public healthcare resources. Local governments throughout the state have suffered substantial declines in sales tax, state aid and other revenues derived from such economic activity, and there is an immediate need to provide local governments with maximum flexibility to finance current year budget deficits resulting from such decline in order to maintain funding of critical public services and infrastructure. Accordingly, this bill would amend sections 29.20 and 41.10 of the local finance law to authorize the issuance by municipalities, school districts, district corporations and BOCES of deficiency notes to provide short-term financing for deficiencies in any fund or funds resulting from any unforeseeable public emergency such as the COVID-19 epidemic and the eventual issuance of long-term bonds by such municipalities, school districts and district corporations for the purpose of liquidating budget deficits resulting from such deficiencies. The act also amends paragraph 2-c. of section 2.00 of the local finance law, in order to allow the issuance of such deficiency notes and bonds by a board of cooperative educational services (“BOCES”).

SUMMARY OF SPECIFIC PROVISIONS: Section 1 of this bill amends Section 29.20 of the local finance law to authorize the issuance of deficiency notes in any fund or funds resulting from any unforeseeable public emergency such as an epidemic. The amount of any deficiency note to be issued shall be determined by the finance board and certified by the chief fiscal officer of such municipality, school district, district corporation or BOCES prior to the issuance of any said notes.

Section 2 of this bill amends paragraph b. of section 29.20 of the local finance law to authorize the renewal of deficiency notes issued by a municipality, school district, district corporation or BOCES for a period of not to exceed five years (5), measured from the date of issuance of said original deficiency note, provided that principal paydowns must be made no later than two years after said note has been issued.

Section 3 of this bill amends paragraph c. of section 29.20 of the local finance law to authorize the redemption of deficiency notes issued by a municipality, school district or district corporation from the proceeds of bonds authorized by section 4 of this act and issued for the purpose of liquidating budget deficits resulting from the deficiencies financed by such notes.

Section 4 of this bill amends paragraph f of section 20.20 of the local finance law to exempt deficiency notes issued as a result of an unforeseen emergency from the requirements of paragraph f of section 29.20.

Section 5 of this bill amends Section 29.20 of the local finance law by adding a new paragraph g, which provides for the issuance of bonds by municipalities, school districts and district corporations for the purpose of liquidating budget deficits resulting from deficiencies and/or for the redemption of deficiency notes previously issued. The new paragraph g sets forth certain conditions that must be met prior to the issuance of any said bonds by a municipality, school district

or district corporation, including review and determination by the State Comptroller of the amount of the budget deficit,. The new paragraph g also sets forth the basis for determining the period of probable usefulness for the bonds issued pursuant to this new paragraph.

Section 6 of this bill amends Section 29.20 of the local finance law by adding a new paragraph h, which authorizes the sale of the bonds authorized to be issued pursuant to paragraph g of Section 29.20 through negotiated private sale, subject to the approval of terms and conditions of said sale by the State Comptroller.

Section 7 of this bill amends paragraph 2-c. of section 2.00 of the local finance law to permit the issuance of deficiency notes by a BOCES.

Section 8 of this bill amends Section 41.10 of the local finance law relating to authorization of a deficiency note by municipalities, school districts, district corporations and BOCES in accordance with the amendments to section 29.20 of the local finance law provided for in the act.

Section 9 of this bill provides that Section 104.10 of the local finance law shall not be applicable to a bond resolution authorizing the issuance of bonds pursuant to new paragraph g hereof.

Section 10 states that this act shall take effect immediately.

JUSTIFICATION: Municipalities, school districts, district corporations and BOCES rely on various revenues to fund their operations and have included estimates of such revenues in their adopted budgets for the current fiscal year. Currently, the spread of COVID-19 has resulted in drastic reductions in travel and commerce and disrupted financial markets. The State has declared a state of emergency and the Governor has taken steps designed to mitigate the spread and impacts of COVID-19, including closing schools and non-essential businesses. These dramatic steps taken by the State to address COVID-19 are expected to drastically reduce certain revenues that municipalities, school districts, district corporations and BOCES have budgeted to fund their current fiscal year operations and thereby cause significant adverse impacts upon the financial operations of municipalities, school districts, district corporations, and BOCES throughout the State. To mitigate these material adverse financial impacts upon municipalities, school districts, district corporations and BOCES, such entities must be given the ability to immediately finance such shortfalls in any amount necessary so they can maintain their operations and meet their public service obligations. Under existing law, a municipality, school district and district corporation is authorized to issue a deficiency note in an amount no to exceed five per centum of the annual budget of such municipality, school district or district corporation. A BOCES is not authorized to issue deficiency notes for any reason. In addition, once a deficiency note is issued it must be redeemed in full with a budgetary appropriation in the following fiscal year. These current law limitations will not allow municipalities, school districts, district corporations and BOCES to adequately address the projected revenue shortfalls and related budget deficits created by the COVID-19 crisis. Municipalities, school districts, district corporations and BOCES will face substantial financial hardship without the legal authorization to finance the total amount of their revenue shortfalls and amortize the cost of such shortfalls over multiple fiscal years. This bill will modify current law to allow municipalities, school districts, district corporations and BOCES to authorize and issue deficiency notes in amounts necessary to address the full magnitude of the revenue shortfalls. The amount of any deficiency note to be issued shall be determined by the

finance board and certified by the chief fiscal officer of such municipality, school district, district corporation or BOCES prior to the issuance of any said notes. In addition, this bill will authorize municipalities, school districts, district corporations and BOCES the flexibility to renew deficiency notes for a period of five years, redeem said notes as soon as adequate resources are available, or liquidate such budget deficits with long-term bonds. The term of such bonds would be determined in accordance with the criteria set forth in the act. The authority to issue renewal notes and/or bonds is expect to enhance the marketability of deficiency notes and will allow additional time for the potential receipt of State and federal aid that may be received on account of the COVID-19 outbreak which can be used to reduce the principal amount of any outstanding deficiency notes. Principal paydowns on outstanding deficiency notes must be made no later than two years after said note has been issued. Prior to the issuance of bonds to finance liquidation of a budget deficit and/or redeem deficiency notes previously issued by a municipality, school district or district corporation, the State Comptroller will be required to review and determine the amount of the budget deficit prior to the issuance of such bonds. Any deficiency notes issued in excess of the amount of the deficit determined by the State Comptroller would need to be repaid with other funds of the municipality, school district or district corporation at maturity or prior redemption. The bill also provides for the authority to sell bonds at private negotiated sale, subject to the approval of terms and conditions by the State Comptroller. This is expected to provide certain municipalities, school district and district corporations facing volatile market conditions with an alternative to the public sale requirement for bonds with a par amount in excess of five million dollars. Lastly, a BOCES would be authorized to issue deficiency notes; however, the BOCES would not be authorized to issue bonds as general obligation bonds.

PRIOR LEGISLATIVE HISTORY: None.

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS: TBD.

EFFECTIVE DATE: This act shall take effect immediately.