



# COUNTY OF ERIE

**DAVID J. SHENK  
COMPTROLLER**

ECLEG MAR21 '12 AM10:10

FM

March 21, 2012

Erie County Legislature  
92 Franklin Street, 4<sup>th</sup> Floor  
Buffalo, New York 14202

**Re: State Authorization for the Private Sale of Bonds by Negotiated Agreement**

Dear Honorable Members:

Enclosed are recommended Home Rule Requests to the New York State Senate and the New York State Assembly to amend New York State Local Finance Law §54.50 to permit the continued underwriting and private sale of Erie County obligations through negotiated agreement until June 30, 2013. A copy of the related legislation introduced in the New York State Senate by Senator Patrick Gallivan (S.6606) and in the New York State Assembly by Assembly members Schimminger, Peoples-Stokes and Gabryszak (A.09355) is also attached for your information.

As outlined in the attached accompanying memorandum, this amendment will provide the County sufficient flexibility in the marketing of bonds. This flexibility allows the County the ability to adjust coupon rates and maturities to ensure a more successful sale of bonds. The County has utilized negotiated authority for many years, and unless the legislature acts, such authority will expire on June 30, 2012. Please note that while the County can benefit from such authority through lower prices and better terms, there may be circumstances and situations in which the county also engages in a competitive process.

I am available to answer any questions that you may have on this issue. Please feel free to contact me at 858-8404 and thank you in advance.

Sincerely yours,

David J. Shenk  
Erie County Comptroller

DJS/nr  
Encl.

6E-3

## ACCOMPANYING MEMORANDUM

RE: State Authorization to Arrange for the Underwriting and Private Sale of Bonds Through Negotiated Agreement

SUMMARY OF RECOMMENDED ACTION: That Erie County request the enactment of state legislation entitled "An Act to amend the local finance law, in relation to the sale of municipal obligations by the County of Erie."

FISCAL IMPLICATIONS OF PROPOSAL: The underwriting of bonds at private sale through a negotiated agreement offers needed flexibility to adjust coupon rates and maturities in response to unexpected events and uncertain credit market conditions. This flexibility can ensure a more successful sale and lower borrowing costs.

REASON FOR RECOMMENDATION: The ability for Erie County to sell serial bonds at private sale expires on June 30, 2012.

BACKGROUND OF PROPSAL: This method of marketing offers the advantage of greater flexibility. The structure of a bond issue or timing of a bond sale can be adjusted as necessary to respond to changing market conditions. Hence, the sale can be designated to meet investor needs and generate significant cost savings to the County.

CONSEQUENCES OF NEGATIVE ACTION: The flexibility needed to ensure a successful sale will be lost, and the County may realize higher borrowing costs.

STEPS FOLLOWING APPROVAL: Pursuant to Article IX of the New York State Constitution, Erie County will formally request enactment of State legislation to amend the New York State Local Finance Law.

## HOME RULE REQUEST-ASSEMBLY

WHEREAS, the County's authority to arrange for the underwriting of bonds or notes at private sale through negotiated agreement expires on June 30, 2012; and

WHEREAS, Assembly Bill A.09355 and Senate Bill S.6606, now pending before the New York State Legislature, would authorize extension of the County's authority to arrange for underwriting of bonds or notes at private sale through negotiated agreement through June 30, 2013;

NOW THEREFORE, BE IT RESOLVED, THAT A HOME RULE REQUEST IS MADE TO THE NEW YORK STATE LEGISLATURE AS FOLLOWS:

TO THE LEGISLATURE:

Pursuant to Article IX of the Constitution, the County of Erie requests the enactment of Assembly Bill A.09355, entitled "AN ACT to amend the local finance law, in relation to the sale of municipal obligations by the county of Erie."

It is hereby declared that a necessity exists for the enactment of such legislation, and that the facts establishing such necessity are as follows:

The local government does not have power to enact such legislation by local law.

Such request is made by the chief executive officer of such municipality, concurred with by a majority of the total membership of the local legislative body.

AND BE IT FURTHER RESOLVED, that the Clerk of the Legislature be directed to forward copies of this home rule request, certified by the Erie County Executive and the Clerk of the Erie County Legislature, two copies of the New York State Assembly and two copies to the New York State Senate.

## HOME RULE REQUEST-SENATE

WHEREAS, the County's authority to arrange for the underwriting of bonds or notes at private sale through negotiated agreement expires on June 30, 2012; and

WHEREAS, Senate Bill S.6066 and Assembly Bill A.09355, now pending before the New York State Legislature, would authorize extension of the County's authority to arrange for underwriting of bonds or notes at private sale through negotiated agreement through June 30, 2013;

NOW THEREFORE, BE IT RESOLVED, THAT A HOME RULE REQUEST IS MADE TO THE NEW YORK STATE LEGISLATURE AS FOLLOWS:

TO THE LEGISLATURE:

Pursuant to Article IX of the Constitution, the County of Erie requests the enactment of Senate Bill S.6606, entitled "AN ACT to amend the local finance law, in relation to the sale of municipal obligations by the county of Erie."

It is hereby declared that a necessity exists for the enactment of such legislation, and that the facts establishing such necessity are as follows:

The local government does not have power to enact such legislation by local law.

Such request is made by the chief executive officer of such municipality, concurred with by a majority of the total membership of the local legislative body.

AND BE IT FURTHER RESOLVED, that the Clerk of the Legislature be directed to forward copies of this home rule request, certified by the Erie County Executive and the Clerk of the Erie County Legislature, two copies of the New York State Senate and two copies to the New York State Assembly.

## S T A T E   O F   N E W   Y O R K

9355

## I N   A S S E M B L Y

February 22, 2012

Introduced by M. of A. SCHIMMINGER, PEOPLES-STOKES, GABRYSZAK -- read once and referred to the Committee on Local Governments

AN ACT to amend the local finance law, in relation to the sale of municipal obligations by the county of Erie

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

- 1     Section 1. Section 54.50 of the local finance law, as amended by chap-  
2     ter 63 of the laws of 2011, is amended to read as follows:  
3     S 54.50 Costs of sales; county of Erie. To facilitate the marketing of  
4     any issue of serial bonds or notes of the county of Erie issued on or  
5     before June thirtieth, two thousand [twelve] THIRTEEN such county may,  
6     notwithstanding any limitations on private sales of bonds provided by  
7     law, and subject to approval by the state comptroller of the terms and  
8     conditions of such sale:  
9     a. arrange for the underwriting of its bonds or notes at private sale  
10    through negotiated agreement, compensation for such underwriting to be  
11    provided by negotiated fee or by sale of such bonds or notes to an  
12    underwriter at a price less than the sum of par value of, and the  
13    accrued interest on, such obligations; or  
14    b. arrange for the private sale of its bonds or notes through negoti-  
15    ated agreement, compensation for such sales to be provided by negotiated  
16    fee, if required. The cost of such underwriting or private placement  
17    shall be deemed a preliminary cost for purposes of section 11.00 of this  
18    chapter.  
19    S 2. This act shall take effect immediately.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD14662-01-2

6606  
I N S E N A T E  
March 2, 2012

Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government  
AN ACT to amend the local finance law, in relation to the sale of municipal obligations by the county of Erie

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

1 Section 1. Section 54.50 of the local finance law, as amended by chapter 2  
2 ter 63 of the laws of 2011, is amended to read as follows:

3 S 54.50 Costs of sales; county of Erie. To facilitate the marketing of  
4 any issue of serial bonds or notes of the county of Erie issued on or  
5 before June thirtieth, two thousand [~~twelve~~] THIRTEEN such county may,  
6 notwithstanding any limitations on private sales of bonds provided by  
7 law, and subject to approval by the state comptroller of the terms and  
8 conditions of such sale:

9 a. arrange for the underwriting of its bonds or notes at private sale  
10 through negotiated agreement, compensation for such underwriting to be  
11 provided by negotiated fee or by sale of such bonds or notes to an  
12 underwriter at a price less than the sum of par value of, and the  
13 accrued interest on, such obligations; or

14 b. arrange for the private sale of its bonds or notes through negotiated  
15 ated agreement, compensation for such sales to be provided by negotiated  
16 fee, if required. The cost of such underwriting or private placement  
17 shall be deemed a preliminary cost for purposes of section 11.00 of this  
18 chapter.

19 S 2. This act shall take effect immediately.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD14809-01-2

# **S6606-2011: Permits the county of Erie to market serial bonds at private sale through June 30, 2013**

Same as: [A9355-2011](#) / Versions: [S6606-2011](#)

**Permits the county of Erie to market serial bonds at private sale through June 30, 2013.**

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**Sponsor:** [GALLIVAN](#)

**Law Section:** [Local Finance Law](#) / **Law:** Amd S54.50, Loc Fin L

## **S6606-2011 Actions**

- Mar 19, 2012: ADVANCED TO THIRD READING
- Mar 15, 2012: 2ND REPORT CAL.
- Mar 14, 2012: 1ST REPORT CAL.361
- Mar 2, 2012: REFERRED TO LOCAL GOVERNMENT

## **S6606-2011 Meetings**

[Local Government: Mar 14, 2012](#)

## **S6606-2011 Calendars**

[Floor Calendar: Mar 15, 2012](#) , [Floor Calendar: Mar 19, 2012](#) , [Floor Calendar: Mar 21, 2012](#)

## **S6606-2011 Votes**

**VOTE: COMMITTEE VOTE: - Local Government - Mar 14, 2012**

**Ayes (6):** [Martins](#), [Little](#), [McDonald](#), [Ritchie](#), [Stewart-Cousins](#), [Klein](#)

**Ayes W/R (1):** [Ball](#)

**Excused (1):** [Oppenheimer](#)

## **S6606-2011 Memo**

BILL NUMBER:S6606

### TITLE OF BILL:

An act

to amend the local finance law, in relation to the sale of municipal obligations by the county of Erie

### PURPOSE:

To provide Erie County with sufficient flexibility in its bond sales to maximize its return on bonds sold.

### SUMMARY OF PROVISIONS:

§ 1- Amends Section 54.50 of the Local Finance Law to permit the County of Erie to market serial bonds at private sale through June 30, 2013.

§ 2- Effective date.

### JUSTIFICATION:

Recent swings in the stock market and confusion and uncertainty in the credit market mandate the need for greater flexibility in the marketing of bonds. In competitive sales the date of bidding is determined once the first advertisement is made, unless the sale is withdrawn and a new one advertised. In negotiated sales, the timing of sales is announced as an objective, but the date of the sale can be changed as required. This flexibility allows the County of Erie to adjust Coupon rates, maturities and general conditions of the sales to ensure a more successful sale of the instruments.

### LEGISLATIVE HISTORY:

2011: A.4215/S.2787 - Chapter 63

2010: Chapter 127

2009: Chapter 39

2008: Chapter 80

2007: Chapter 87

2006: Chapter 123

2005: Chapter 113

2004: Chapter 115

2003: Chapter 405

2002: Chapter 98

2001: Chapter 57

2000: Chapter 96

1999: Chapter 406

1998: Chapter 139

1997: Chapter 148

1996: Chapter 119

### FISCAL IMPLICATIONS:

Produces lower interest rates for the County of Erie in negotiating the sale of their bonds.

### EFFECTIVE DATE:

This act shall take effect immediately.

## S6606-2011 Text

S T A T E   O F   N E W   Y O R K

6606

I N   S E N A T E  
March 2, 2012

Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the local finance law, in relation to the sale of municipal obligations by the county of Erie  
THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1.

Section 54.50 of the local finance law, as amended by chapter 63 of the laws of 2011, is amended to read as follows:

S 54.50 Costs of sales; county of Erie. To facilitate the marketing of any issue of serial bonds or notes of the county of Erie issued on or before June thirtieth, two thousand [~~twelve~~] THIRTEEN such county may, notwithstanding any limitations on private sales of bonds provided by law, and subject to approval by the state comptroller of the terms and conditions of such sale:

- a. arrange for the underwriting of its bonds or notes at private sale through negotiated agreement, compensation for such underwriting to be provided by negotiated fee or by sale of such bonds or notes to an underwriter at a price less than the sum of par value of, and the accrued interest on, such obligations; or
- b. arrange for the private sale of its bonds or notes through negotiated agreement, compensation for such sales to be provided by negotiated fee, if required. The cost of such underwriting or private placement shall be deemed a preliminary cost for purposes of section 11.00 of this chapter.

S 2. This act shall take effect immediately.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD14809-01-2