

SENATE, No. 1038

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED MAY 14, 1998

Sponsored by:

Senator WALTER J. KAVANAUGH

District 16 (Morris and Somerset)

Senator PETER A. INVERSO

District 14 (Mercer and Middlesex)

SYNOPSIS

Authorizes State Treasurer to sell State tax indebtedness and merit rating surcharge indebtedness.

CURRENT VERSION OF TEXT

As introduced.



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2

1 **AN ACT** authorizing the sale, assignment and transfer of State tax
2 and motor vehicle surcharge indebtedness and lien, supplementing
3 chapter 50 of Title 54 of the Revised Statutes and amending
4 P.L.1983, c.65.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State of
7 New Jersey:

8

9 1. (New section) a. The State Treasurer shall have the authority
10 to sell, transfer or assign all right, title and interest in any State tax
11 indebtedness and lien represented by any certificate of debt including
12 any statutory fee for the cost of collection imposed pursuant to
13 section 8 of P.L.1987, c.76 (C.54:49-12.1), issued pursuant to
14 R.S.54:49-12 to any person for a fair, adequate and reasonable
15 consideration; provided however, that the underlying State tax
16 indebtedness and lien represented by the certificate is fixed and
17 constitutes a final determination of the Director of the Division of
18 Taxation not subject to protest or appeal pursuant to the provisions
19 of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

20 b. After a sale pursuant to this section and for the purpose of the
21 proper administration of this section and to prevent untimely protests
22 or appeals of the underlying tax indebtedness, it shall be presumed that
23 the tax indebtedness is fixed and constitutes a final determination of
24 the director not subject to protest or appeal unless the taxpayer or the
25 taxpayer's authorized representative can establish by clear and
26 convincing evidence that the contrary is true. If the taxpayer contests
27 the underlying tax indebtedness after the sale, transfer or assignment
28 of the State tax indebtedness and lien represented by any certificate of
29 debt, then the taxpayer shall first file a protest with the director
30 pursuant to R.S.54:49-18 before bringing an appeal to the tax court
31 pursuant to chapter 51A of Title 54 of the Revised Statutes; provided
32 however, that the director shall be joined as the primary party in
33 interest with the person to whom the State tax indebtedness and lien
34 has been sold, transferred or assigned in any action or proceeding
35 brought to challenge the underlying tax indebtedness. The director
36 shall advise by written notice the clerk of the court which has entered
37 the certificate on its record of docketed judgments that the sale,
38 transfer or assignment has been made in the name and address of the
39 purchaser. Thereupon, the clerk shall, without cost, enter a notation
40 of the sale and the name and address of the purchaser in the record of
41 docketed judgments. This written notice shall also be given by the
42 director to the taxpayer in accordance with R.S.54:50-6.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 2. (New section) All sales, transfers or assignments of
2 indebtedness and lien represented by certificates of debt shall be on
3 such terms and conditions as the State Treasurer may determine
4 appropriate. In setting these terms, conditions and the fair, adequate
5 and reasonable consideration, the State Treasurer shall consider what
6 will be most advantageous to the State based upon a present value
7 analysis taking into account the likelihood of the State collecting the
8 indebtedness within a reasonable time and other factors as the State
9 Treasurer may determine.

10

11 3. (New section) The purchaser, transferee or assignee of any State
12 tax indebtedness and lien represented by a certificate of debt shall be
13 entitled to exercise all the remedies and may take all of the
14 proceedings for the collection of the indebtedness represented by the
15 certificate that are available pursuant to the laws of this State to any
16 judgment creditor, and shall be entitled to the same priority as the
17 State may have respecting the certificate and underlying indebtedness
18 and lien. Interest shall accrue at the rate provided by R.S.54:49-3.

19

20 4. (New section) Notwithstanding the provisions of subsection a.
21 of R.S.54:50-8 to the contrary, the Director of the Division of
22 Taxation may provide the purchaser, transferee or assignee of the
23 indebtedness and lien represented by the certificate of debt such
24 taxpayer information as is necessary for the purchaser to collect the
25 indebtedness represented by the certificate, provided that such
26 disclosure is not contrary to the provisions of subsection (a) of section
27 6103 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.6103
28 or other State or federal law. Such purchaser, transferee or assignee
29 and its employees shall be specifically subject to the confidentiality
30 provisions of R.S.54:50-8; and the purchaser shall furnish the director
31 with the affidavit of each of its principals and employees in which each
32 such principal and employee shall acknowledge receipt of a copy of the
33 confidentiality provisions of the State Tax Uniform Procedure Law,
34 R.S.54:48-1 et seq., understanding of the obligation to maintain, and
35 agreement to maintain, the confidentiality of taxpayer information, and
36 awareness that violation of the confidentiality provisions is punishable
37 by law.

38

39 5. (New section) The purchaser, transferee or assignee of the
40 indebtedness and lien represented by the certificate of debt shall
41 promptly file any warrant of satisfaction with the clerk, and such
42 warrant of satisfaction shall be recorded in the office of any recording
43 officer in which such certificate has been filed.

44

45 6. (New section) All proceeds received by the State Treasurer
46 from the sale, transfer or assignment of State tax indebtedness and lien

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1 represented by certificates of debt pursuant to sections 1 through 5 of
2 P.L. , c. (C.)(now pending before the Legislature as this
3 bill) shall be deposited in the designated fund, if any, as may be
4 provided by law for deposit of the proceeds collected pursuant to the
5 State tax under which the indebtedness arises, including but not limited
6 to the indebtedness pursuant to the "New Jersey Gross Income Tax
7 Act," N.J.S.54A:1-1 et seq., the proceeds of which sale, transfer or
8 assignment of indebtedness and lien shall be deposited to the Property
9 Tax Relief Fund established pursuant to N.J.S.54A:9-25.

10
11 7. (New section) The Director of the Division of Taxation is
12 authorized to promulgate regulations and take other necessary or
13 useful measures for the purpose of efficiently administering sections
14 1 through 6 of this act, securing the largest possible revenue for the
15 State, ensuring the integrity of the collection program and assuring
16 fairness to taxpayers.

17
18 8. (New Section) Under no circumstances shall any purchaser,
19 transferee, or designee have any legal recourse against the State or its
20 officers or employees for any damages of any sort whatsoever that
21 might arise on account of or in connection with any sale, transfer or
22 assignment made or proposed to be made pursuant to the provisions
23 of sections 1 through 7 of P.L. , c. (C.)(now pending
24 before the Legislature as this bill).

25
26 9. Section 6 of P.L.1983, c.65 (C.17:29A-35) is amended to read
27 as follows:

28 6. a. (Deleted by amendment, P.L.1997, c.151.)

29 b. There is created a New Jersey Merit Rating Plan which shall
30 apply to all drivers and shall include, but not be limited to, the
31 following provisions:

32 (1) (a) Plan surcharges shall be levied, beginning on or after
33 January 1, 1984, by the Division of Motor Vehicles on any driver who
34 has accumulated, within the immediately preceding three-year period,
35 beginning on or after February 10, 1983, six or more motor vehicle
36 points, as provided in Title 39 of the Revised Statutes, exclusive of
37 any points for convictions for which surcharges are levied under
38 paragraph (2) of this subsection; except that the allowance for a
39 reduction of points in Title 39 of the Revised Statutes shall not apply
40 for the purpose of determining surcharges under this paragraph.
41 Surcharges shall be levied for each year in which the driver possesses
42 six or more points. Surcharges assessed pursuant to this paragraph
43 shall be ~~[\$100.00]~~ \$100 for six points, and ~~[\$25.00]~~ \$25 for each
44 additional point.

45 (b) (Deleted by amendment, P.L.1984, c.1.)

46 (2) Plan surcharges shall be levied for convictions (a) under

1 R.S.39:4-50 for violations occurring on or after February 10, 1983,
2 and (b) under section 2 of P.L.1981, c.512 (C.39:4-50.4a), or for
3 offenses committed in other jurisdictions of a substantially similar
4 nature to those under R.S.39:4-50 or section 2 of P.L.1981, c.512
5 (C.39:4-50.4a), for violations occurring on or after January 26, 1984.
6 Except as hereinafter provided, surcharges under this paragraph shall
7 be levied annually for a three-year period, and shall be **[\$1,000.00]**
8 \$1,000 per year for each of the first two convictions, for a total
9 surcharge of \$3,000 for each conviction, and **[\$1,500.00]** \$1,500 per
10 year for the third conviction occurring within a three-year period, for
11 a total surcharge of \$4,500 for the third conviction. If a driver is
12 convicted under both R.S.39:4-50 and section 2 of P.L.1981, c.512
13 (C.39:4-50.4a) for offenses arising out of the same incident, the driver
14 shall be assessed only one surcharge for the two offenses.

15 If, upon written notification from the Division of Motor Vehicles,
16 mailed to the last address of record with the division, a driver fails to
17 pay a surcharge levied under this subsection, the license of the driver
18 shall be suspended forthwith until the surcharge is paid to the Division
19 of Motor Vehicles; except that the Division of Motor Vehicles may
20 authorize payment of the surcharge on an installment basis over a
21 period not to exceed 12 months. If a driver fails to pay the surcharge
22 or any installments on the surcharge, the total surcharge shall become
23 due immediately.

24 The director may authorize any person to pay the surcharge levied
25 under this section by use of a credit card, and the director is
26 authorized to require the person to pay all costs incurred by the
27 division in connection with the acceptance of the credit card.

28 In addition to any other remedy provided by law, the director is
29 authorized to utilize the provisions of the SOIL (Setoff of Individual
30 Liability) program established pursuant to P.L.1981, c.239
31 (C.54A:9-8.1 et seq.) to collect any surcharge levied under this section
32 that is unpaid on or after the effective date of this act. As an
33 additional remedy, the director may issue a certificate to the Clerk of
34 the Superior Court stating that the person identified in the certificate
35 is indebted under this surcharge law in such amount as shall be stated
36 in the certificate. The certificate shall reference the statute under
37 which the indebtedness arises. Thereupon the clerk to whom such
38 certificate shall have been issued shall immediately enter upon the
39 record of docketed judgments the name of such person as debtor; the
40 State as creditor; the address of such person, if shown in the
41 certificate; the amount of the debt so certified; a reference to the
42 statute under which the surcharge is assessed, and the date of making
43 such entries. The docketing of the entries shall have the same force
44 and effect as a civil judgment docketed in the Superior Court, and the
45 director shall have all the remedies and may take all of the proceedings
46 for the collection thereof which may be had or taken upon the

1 recovery of a judgment in an action, but without prejudice to any right
2 of appeal. Upon entry by the clerk of the certificate in the record of
3 docketed judgments in accordance with this provision, interest in the
4 amount specified by the court rules for post-judgment interest shall
5 accrue from the date of the docketing of the certificate, however
6 payment of the interest may be waived by the director. In the event
7 that the surcharge remains unpaid following the issuance of the
8 certificate of debt and the director takes any further collection action
9 including referral of the matter to the Attorney General or his
10 designee, the fee imposed, in lieu of the actual cost of collection, may
11 be 20 percent of the surcharge or \$200, whichever is greater. The
12 director shall provide written notification to a driver of the proposed
13 filing of the certificate of debt 10 days prior to the proposed filing;
14 such notice shall be mailed to the driver's last address of record with
15 the division.

16 All moneys collectible under this subsection b. shall be billed and
17 collected by the Division of Motor Vehicles except as provided in
18 P.L.1997, c.280 (C.2B:19-10 et al.) for the collection of unpaid
19 surcharges. Of the moneys collected: 10%, or the actual cost of
20 administering the collection of the surcharge, whichever is less, shall
21 be retained by the Division of Motor Vehicles until August 31, 1996;
22 five percent, or the actual cost of administering the cancellation
23 notification system established pursuant to section 50 of P.L.1990, c.8
24 (C.17:33B-41), whichever is less, shall be retained by the Division of
25 Motor Vehicles until August 31, 1996; and prior to October 1, 1991,
26 the remainder shall be remitted to the New Jersey Automobile Full
27 Insurance Underwriting Association and on or after October 1, 1991
28 until August 31, 1996, the remainder shall be remitted to the New
29 Jersey Automobile Insurance Guaranty Fund created pursuant to
30 section 23 of P.L.1990, c.8 (C.17:33B-5). Commencing on September
31 1, 1996, or such earlier time as the Commissioner of Banking and
32 Insurance shall certify to the State Treasurer that amounts on deposit
33 in the New Jersey Automobile Insurance Guaranty Fund are sufficient
34 to satisfy the current and anticipated financial obligations of the New
35 Jersey Automobile Full Insurance Underwriting Association, all plan
36 surcharges collected by the Division of Motor Vehicles under this
37 subsection b. shall be remitted to the Division of Motor Vehicles
38 Surcharge Fund for transfer to the Market Transition Facility Revenue
39 Fund, as provided in section 12 of P.L.1994, c.57 (C.34:1B-21.12),
40 for the purposes of section 4 of P.L.1994, c.57 (C.34:1B-21.4) until
41 such a time as all the Market Transition Facility bonds, notes and
42 obligations issued pursuant to that section 4 of that act and the costs
43 thereof are discharged and no longer outstanding. From the date of
44 certification by the Commissioner of Banking and Insurance that the
45 moneys collectible under this subsection are no longer needed to fund
46 the association or at such a time as all Market Transition Facility

1 bonds, notes and obligations issued pursuant to section 4 of P.L.1994,
2 c.57 (C.34:1B-21.4) and the costs thereof are discharged and no
3 longer outstanding moneys collectible under this subsection shall,
4 subject to appropriation, be remitted to the New Jersey
5 Property-Liability Insurance Guaranty Association created pursuant to
6 section 6 of P.L.1974, c.17 (C.17:30A-6) to be used for payment of
7 any loans made by that association to the New Jersey Automobile
8 Insurance Guaranty Fund pursuant to paragraph (10) of subsection a.
9 of section 8 of P.L.1974, c.17 (C.17:30A-8); provided that all such
10 payments shall be subject to and dependent upon appropriation by the
11 State Legislature.

12 (3) In addition to any other authority provided in P.L.1983, c.65
13 (C.17:29A-33 et al.), the commissioner, after consultation with the
14 Director of the Division of Motor Vehicles, is specifically authorized
15 (a) (Deleted by amendment, P.L.1994, c.64), (b) to impose, in
16 accordance with paragraph (1)(a) of this subsection, surcharges for
17 motor vehicle violations or convictions for which motor vehicle points
18 are not assessed under Title 39 of the Revised Statutes, or (c) to
19 reduce the number of points for which surcharges may be assessed
20 below the level provided in paragraph (1)(a) of this subsection, except
21 that the dollar amount of all surcharges levied under the New Jersey
22 Merit Rating Plan shall be uniform on a Statewide basis for each filer,
23 without regard to classification or territory. Surcharges adopted by
24 the commissioner on or after January 1, 1984 for motor vehicle
25 violations or convictions for which motor vehicle points are not
26 assessable under Title 39 of the Revised Statutes shall not be
27 retroactively applied but shall take effect on the date of the New
28 Jersey Register in which notice of adoption appears or the effective
29 date set forth in that notice, whichever is later.

30 c. No motor vehicle violation surcharges shall be levied on an
31 automobile insurance policy issued or renewed on or after January 1,
32 1984, except in accordance with the New Jersey Merit Rating Plan,
33 and all surcharges levied thereunder shall be assessed, collected and
34 distributed in accordance with subsection b. of this section.

35 d. (Deleted by amendment, P.L.1990, c.8.)

36 e. The Commissioner of Banking and Insurance and the Director
37 of the Division of Motor Vehicles as may be appropriate, shall adopt
38 any rules and regulations necessary or appropriate to effectuate the
39 purposes of subsections a. through e. of this section.

40 f. The State Treasurer shall have the authority to sell, transfer or
41 assign all rights, title and interest in any State indebtedness and lien
42 represented by any certificate of debt issued pursuant to subsection b.
43 of this section, including any statutory fee for the cost of collection
44 imposed pursuant to subsection b. of this section, to any person for a
45 fair, adequate and reasonable consideration; provided however, that
46 the underlying indebtedness represented by the certificate is fixed and

1 constitutes a final determination of the director not subject to protest
2 or appeal pursuant to the provisions of this section. After a sale as
3 provided in this section and for the purpose of the proper
4 administration of this section and to prevent untimely protests or
5 appeals of the underlying indebtedness, it shall be presumed that the
6 indebtedness is fixed and constitutes a final determination of the
7 director not subject to protest or appeal unless the driver can establish
8 by clear and convincing evidence that the contrary is true. If the driver
9 contests the underlying indebtedness after the sale, transfer or
10 assignment of the State indebtedness and lien represented by any
11 certificate of debt, then the driver shall first file a protest with the
12 director; provided however, that the director shall be joined as the
13 primary party in interest with the person to whom the indebtedness and
14 lien has been sold, transferred or assigned, in any action or proceeding
15 brought to challenge the underlying indebtedness. The director shall
16 advise by written notice the clerk of the court which has entered the
17 certificate on its record of docketed judgments, that the sale, transfer
18 or assignment has been made and the name and address of the
19 purchaser. Thereupon, the clerk shall, without cost, enter a notation
20 of such sale and the name and address of the purchaser in the record
21 of docketed judgments. This written notice shall also be sent by the
22 director by regular mail to the driver to the last address of the driver
23 on file with the director.

24 g. All sales, transfers or assignments of the indebtedness and lien
25 represented by certificates of debt shall be on such terms and
26 conditions as the State Treasurer may determine appropriate. In
27 setting these terms, conditions and the fair, adequate and reasonable
28 consideration, the State Treasurer shall consider what will be most
29 advantageous to the State based upon a present value analysis taking
30 into account the likelihood of the State collecting the indebtedness
31 within a reasonable time and other factors as the State Treasurer may
32 determine.

33 h. The purchaser, transferee or assignee of any indebtedness and
34 lien represented by a certificate of debt shall be entitled to exercise all
35 the remedies and may take all of the proceedings for the collection of
36 the indebtedness represented by the certificate that are available
37 pursuant to the laws of this State to any judgment creditor, and shall
38 be entitled to the same priority as the State may have respecting the
39 certificate and underlying indebtedness. Interest shall accrue at the
40 rate provided by the Rules Governing the Courts of the State of New
41 Jersey.

42 i. The director may provide the purchaser, transferee or assignee
43 of the indebtedness and lien represented by the certificate of debt such
44 driver information as is necessary for the purchaser to collect the
45 indebtedness represented by the certificate, provided that such

1 disclosure is not contrary to the provisions of other State or federal
2 law.

3 j. The purchaser, transferee or assignee of the indebtedness and lien
4 shall promptly file any warrant of satisfaction with the clerk, and such
5 warrant of satisfaction shall be recorded in the office of any recording
6 officer in which such certificate has been filed.

7 k. All proceeds received by the State Treasurer from the sale,
8 transfer or assignment of State indebtedness and lien represented by
9 certificates of debt pursuant to this section shall be deposited in such
10 fund as may be provided by law, including P.L.1994, c.57 (C.34:1B-
11 21.1 et al.), for deposit of such proceeds; provided however, that
12 those proceeds shall be used only to provide for the redemption or
13 retirement of any existing Market Transition Facility bonds, notes and
14 obligations issued pursuant to section 4 of P.L.1994, c.57 (C.34:1B-
15 21.4), in accordance with, and to the extent permitted by, the terms
16 and conditions of those Market Transition Facility bonds, notes and
17 obligations and thereafter, subject to appropriation, as provided
18 pursuant to subsection b. of this section.

19 l. The Commissioner of Banking and Insurance or the State
20 Treasurer, as appropriate, shall adopt regulations and take other
21 necessary or useful measures for the purpose of efficiently
22 administering subsections f. through m. of this section, securing the
23 largest possible revenue for the State, ensuring the integrity of the
24 collection program and assuring fairness to drivers.

25 m. Under no circumstances shall any purchaser, transferee, or
26 designee have any legal recourse against the State or its officers or
27 employees for any damages of any sort whatsoever that might arise on
28 account of or in connection with any sale, transfer or assignment made
29 or proposed to be made pursuant to the provisions of subsections f.
30 through l. of this section.

31 (cf: P.L.1997, c.280, s.5)

32

33 10. This act shall take effect immediately.

34

35

36

STATEMENT

37

38 This bill authorizes the State Treasurer to sell State tax
39 indebtedness and merit rating surcharge indebtedness.

40 The bill authorizes the State Treasurer to sell debt that has been
41 reduced to a lien under a certificate of debt filed with the clerk of the
42 Superior Court, a filing that has the same legal effect as the entry of
43 a court judgment of indebtedness. Taxpayers and those assessed
44 surcharges may still appeal the underlying indebtedness, but must
45 establish their lack of liability by presentation of clear and convincing
46 evidence.

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1 The bill allows the Treasurer to determine the appropriate terms
2 and conditions for all sales of debt, based on what will be most
3 advantageous to the State, a present value analysis of the probability
4 and time lapse involved in collecting the debt, and other relevant
5 factors. The Director of the Division of Taxation, in the case of tax
6 indebtedness, and the Director of the Division of Motor Vehicles, in
7 the case of surcharge indebtedness, must notify the court and the
8 debtor of the purchaser of debt when debt is sold. The purchaser of
9 debt is entitled to all of the remedies, and may take all of the
10 proceedings for collecting the indebtedness, that are available under
11 State law to a judgment creditor. The "indebtedness" includes interest
12 at statutory rates and the provision for certain collection costs.

13 To protect debtors, purchasers of debt must file promptly any
14 warrant of satisfaction of the debt. Purchasers of tax indebtedness and
15 their employees are subject to the confidentiality provisions of the
16 State Tax Uniform Procedure Law, and are subject to criminal
17 penalties and fine if purchasers or their employees use tax information
18 for purposes other than the collection of the debt. Purchasers of merit
19 rating surcharge indebtedness will be provided with information
20 necessary to collect the debt if disclosure of the information does not
21 violate State or federal law.

22 The bill requires that, if the underlying tax or surcharge must be
23 deposited to a dedicated fund, then the proceeds of the sale of the
24 indebtedness relating to the tax or surcharge must be deposited to the
25 same dedicated fund.