

**§1032. Capital reserve funds; obligation of State**

**1. Capital reserve fund.** The authority may create and establish one or more capital reserve funds and may pay into any such capital reserve fund any money appropriated and made available by the State for the purposes of any such fund and any other money available to the authority. For purposes of this section, the amount of any letter of credit, insurance contract, surety bond, indemnification agreement or similar financial undertaking available to be drawn on and applied to obligations to which money in any such fund may be applied shall be deemed to be and counted as money in the capital reserve fund.

[PL 1987, c. 697, §9 (NEW).]

**2. Application.** Money in any capital reserve fund created pursuant to subsection 1, except as provided in this section, must be used solely with respect to mortgage loans, repayment of which is secured by any such fund, for the payment of principal, accrued interest and costs and expenses chargeable to the mortgage loan, with respect to interest rate swap agreements benefiting eligible enterprises, and with respect to amounts borrowed by the authority to be used for direct loans from the authority to eligible businesses or students pursuing higher education when direct loans have been authorized by law. Money in any capital reserve fund may be used to pay all amounts due and payable, whether by acceleration or otherwise, under the contractual agreements pertaining to such mortgage loans, interest rate swap agreements and loans to the authority, including fees, commissions, indemnities, expenses and other amounts due. Money in excess of the reserve requirement established pursuant to subsection 4 may be transferred to other funds and accounts of the authority.

[PL 1993, c. 410, Pt. EEEE, §2 (AMD).]

**3. Security for loans.** With respect to any loans that may be insured under this subchapter, interest rate swap agreements benefiting eligible enterprises and loans to the authority to be used for direct loans to eligible enterprises or students pursuing higher education, the authority may provide that such loans, interest rate swap agreements or loans to the authority must be secured by one or more capital reserve funds established pursuant to subsection 1 instead of or in addition to insurance provided under other sections of this subchapter. Limitations and requirements applicable to insurance under sections 1026-A to 1028 are applicable to loans, but not interest rate swap agreements or loans to the authority, to which one or more capital reserve funds apply as if the loans were backed by insurance. Capital reserve funds may secure interest rate swap agreements pertaining to eligible enterprises that demonstrate the ability to honor the swap agreement as determined by the authority and that do not have as a principal element space for retail sales or professional office space, as defined by the authority. Any commitment with respect to a loan executed and delivered pursuant to this section is conclusive evidence of the eligibility of the loan for insurance and the validity of any such commitment or contract is incontestable in the hands of a lender, swap counterparty or lender to the authority except for fraud or misrepresentation on the part of the lender, swap counterparty or lender to the authority. Loans secured by capital reserve funds under this section are made legal investments for all insurance companies, trust companies, banks, investment companies, savings banks, savings and loan associations, executors, trustees and other fiduciaries, public and private pension or retirement funds and other persons.

[PL 2003, c. 537, §46 (AMD); PL 2003, c. 537, §53 (AFF).]

**4. Reserve requirement.** The authority may provide that money in any such capital reserve fund shall not be withdrawn at any time in an amount that would reduce the amount of any such fund below an amount established by the authority with respect to the fund, except for the purpose of paying the amount due pursuant to the terms of any mortgage loan or interest rate swap agreement or loan to the authority, repayment of which is secured by any such fund.

[PL 1989, c. 552, §15 (AMD).]

**5. Appropriation.** On or before December 1st, annually, the authority shall certify to the Governor the amount, if any, necessary to restore the amount in any capital reserve fund to which this section is stated in any written agreement of the authority to apply, to the reserve requirement established by the authority. The Governor shall pay directly from the State Contingent Account to any such fund as much of the amount as is available in that account and shall transmit directly to the Legislature certification and a statement of the amount, if any, remaining to be paid. The certified amount shall be appropriated and paid to the authority during the current state fiscal year.

[PL 1987, c. 697, §9 (NEW).]

**6. Obligations outstanding.** The authority may not have at any one time outstanding obligations to which this section is stated in any agreement of the authority to apply in principal amount exceeding \$150,000,000, less the amount of revenue obligation securities to which section 1053 is stated in the trust agreement or other document to apply. Amounts of revenue obligation securities that are not taken into account pursuant to section 1053, subsection 6, may not be taken into account for purposes of determining the amount that may be outstanding under this section. Notwithstanding the foregoing, the authority may additionally have outstanding at any one time up to \$3,500,000 of obligations relating to direct loans to students pursuing higher education.

[PL 2003, c. 537, §47 (AMD); PL 2003, c. 537, §53 (AFF).]

#### SECTION HISTORY

PL 1987, c. 697, §9 (NEW). PL 1989, c. 552, §15 (AMD). PL 1993, c. 410, §EEEE2 (AMD). PL 1993, c. 460, §7 (AMD). PL 1993, c. 680, §A19 (AMD). PL 1997, c. 217, §2 (AMD). PL 2003, c. 537, §§46,47 (AMD). PL 2003, c. 537, §53 (AFF).

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