Office of the New York State Comptroller

How to Apply for Exclusion of Sewer Debt from Municipal Debt Limits

(Pursuant to Section 124.10 of the Local Finance Law)

January 2024

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INTRODUCTION

This booklet contains the suggested application and legal notice form for an exclusion of certain sewer debt from a municipality's Constitutional debt limit. The Office of the State Comptroller is empowered to review and approve these exclusions. Once approved, the exclusion does not need to be renewed each year, but instead is effective for the entire term of the debt sought to be excluded.

Article VIII of the State Constitution contains basic principles of debt regulation intended to help municipalities and school districts maintain sound fiscal practices and preserve credit market access. Among other things, it requires that municipal debt be issued only for local public purposes, that the faith and credit of the issuing government is pledged for all local debt, and that annual appropriations for payment of debt service be made by the borrowing authorities. It also places a limit upon the amount of debt issued by any municipality by prescribing a percentage of the five year average of the full valuation of taxable real property within that municipality. This is known as the "Constitutional Debt Limit." Calculation of a municipality's debt limit is an important step in assessing its fiscal status and its ability to contract further debt.

However, the Constitution stipulates that indebtedness for certain purposes can be excluded from the debt limit. Under several of these provisions, the State Legislature sets the terms and conditions for these exclusions, and has provided for an approval role for the State Comptroller.

At the November 2023 general election, voters approved a ten-year extension of the Constitutional provision which authorizes the exclusion of debt incurred for sanitary sewer projects from municipal debt limits. A conforming statutory amendment was made to Local Finance Law. Both amendments became effective on January 1, 2024. *As a result, this exclusion is* ***effective for sanitary sewer debt contracted on or after January 1, 1962, and prior to January 1, 2034.***

These sewer debt exclusions are NOT granted automatically to a municipality. The State Legislature has specified the method by which, and the terms and conditions under which, the amounts of such exclusions will be determined (see Section 124.10 of the Local Finance Law, as amended). This statute empowers the State Comptroller to prescribe the form of application for exclusion of sanitary sewer debt from the debt limits of counties, cities, towns and villages in New York State.

The enclosed application and legal forms are for your use in seeking sewer debt exclusions. To obtain further information in relation to an application, contact the Office of State Comptroller, Division of Legal Services, at (518) 474-5586, or the Division of Local Government and School Accountability at (866) 321-8503. Written inquiries may be made to:

Office of the State Comptroller
110 State St.
Albany, NY 12236

EXCLUSION APPLICATION
SECTION 124.10

Suggested form of application for exclusion of outstanding and/or proposed SANITARY SEWER indebtedness, pursuant to Local Finance Law, section 124.10.

PLEASE TYPE ON SEPARATE SHEETS, OMITTING ALL INAPPLICABLE INFORMATION.

STATE OF NEW YORK **DEPARTMENT OF AUDIT AND CONTROL**

IN THE MATTER OF THE

Application of _____, as Chief Fiscal Officer (*See instruction 1*) of the (*county, city, town or village*) of _____, for a Certificate of the State Comptroller authorizing the exclusion of certain _____ Sanitary Sewer Indebtedness (*See Instruction 2*) pursuant to **section 124.10** of the Local Finance Law.

1. This application is made pursuant to the provisions of section 124.10 of the Local Finance Law and is made by _____, _____, and the **Chief Fiscal Officer** of the (*county, city, town or village*) of _____ *(in the exercise of his/her discretion as such Chief Fiscal Officer*) or (*on the direction of the Finance Board of such Municipality*). (*PLEASE SPECIFY*)

2. **The current fiscal year** of such Municipality commenced on _____, 20___, and will end on _____, 20___.

3. **Description** of Sanitary Sewer Facilities. (*See Instruction 3*)

4. Description **of Previous Exclusion(s)** filed or granted pursuant to **Section 124.10** of the Local Finance Law. (*See Instruction 4*)

5. Description of **Previous Exclusion(s)** granted for Sanitary Sewer purposes pursuant to **123.00** of the Local Finance Law. (*See Instruction 5*)

6. The **Indebtedness** sought to be excluded in this proceeding in the total amount of $_____ is described in the verified itemized statement hereto annexed, and made a part thereof. Please indicate the amount of any such indebtedness that is proposed to be contracted. (*See Instruction 6*)

7. The Municipality has received (or expects to receive) **State and Federal grants** for the project (or projects) in the total sum of $_____. (If no such aid is expected, this fact should be set forth here.)

8. Description of **Debt Service payments** on bonds, including a maturity schedule and statement of the manner in which debt service will be paid. (*See Instruction 7*)

9. The **Revenues**, if any, of such facilities, during the period for which the exclusion is effective, will be applied to, and actually used for, the payment of all costs of operation, maintenance and repairs for such period, and the payment of the amounts required for the interest on, and amortization of, or redemption of, the excluded indebtedness, or such revenue shall be deposited in a special fund to be used solely for such payments. (*See Instruction 8*)

WHEREFORE, the foregoing Chief Fiscal Officer hereby requests the State Comptroller to issue his written Certificate setting forth his determination excluding the (outstanding and/or proposed) indebtedness of such Municipality, described in the annexed verified statement, from the limitations imposed by section 4 of Article VIII of the Constitution and section 104.00 of the Local Finance Law, in relation to the power of the Municipality to contract Indebtedness.

Date: _____

(Signed) _____

Chief Fiscal Officer of the
(County, City, Town or Village)

INSTRUCTIONS FOR COMPLETING APPLICATION

1. One **ORIGINAL** application and one **ORIGINAL** verification statement, (i.e., NOT photocopies) must be filed by the chief fiscal officer of the municipality with the State Comptroller. These must be both signed and dated by the chief fiscal officer and **NOTARIZED**. (*See page 13 for a suggested verification form*.)

2. Indicate whether the sanitary sewer indebtedness is outstanding, proposed to be contracted, or outstanding AND proposed to be contracted.

NOTE: *The municipality does NOT have to wait until the sanitary sewer debt is actually contracted before applying for an exclusion. It may apply for an exclusion of PROPOSED as well as OUTSTANDING indebtedness. However, a certificate for PROPOSED INDEBTEDNESS will be contingent upon such debt actually being issued.*

3a. Describe briefly the sanitary sewer facilities for which the debt has been and/or is proposed to be contracted and state that this sewerage debt is for the **Construction** or **Reconstruction** of facilities for the conveyance, treatment, and disposal of sewage (including sewers, laterals, trunks, interceptors, and pumping stations, as well as sewage treatment plants.)

NOTE: *Debt incurred **SOLELY** for **STORM SEWERS** cannot be excluded under section 124.10, but debt incurred or to be incurred for **COMBINATION SANITARY AND STORM SEWER PURPOSES** may be eligible for exclusion. If any part of the facilities are for a purpose other than conveyance, treatment or disposal of sewage, please so state. Specify the nature of such other purpose and the amount of indebtedness issued or proposed to be issued therefor.*

b. Specify the law(s) pursuant to which the facilities are, or will be, owned and operated.
c. State the actual or approximate date when these facilities were, or are to be, placed into operation.
d. In the case of an **improvement district** of a county or town:

1. State the date on which such improvement district was created and the date of any extension thereof.

2. Refer to the statutes pursuant to which the improvement district was created or extended.

3. Indicate the statutes pursuant to which it operates.

4. State the maximum amount authorized to be expended for such facilities.

5. State the beginning and ending dates of the fiscal year in which the application is filed.

4a. Indicate whether a previous exclusion pursuant to **section 124.10** has been filed or granted with regard to the **same indebtedness hereby sought to be excluded**. If such a previous application has been filed, and/or exclusion granted, please state:

1. The date filed (if pending),
2. The amount of the indebtedness,
3. The purpose of the exclusion/application, and
4. The date the exclusion was granted.

If the current application requests the exclusion of additional debt for the SAME project, please so state.

b. If a previous application has NOT been filed, please state the following: "No previous application has been filed pursuant to section 124.10 of the Local Finance Law for the exclusion of the same Indebtedness hereby sought to be excluded."

c. If your municipality wishes a previous exclusion to be SUPERSEDED, please so indicate, together with the reason for the request.

5a. If your municipality was granted an exclusion of indebtedness pursuant to section 123.00 of the Local Finance Law for the same indebtedness referred to in this application, please provide the following information:

1. Whether the indebtedness is outstanding and/or proposed,
2. The date of the certificate and the amount and nature of the indebtedness, and
3. When the exclusion expired or will expire.

b. If your municipality was NOT granted an exclusion for the same facilities pursuant to section 123.00, please so state.

6a. The total amount of indebtedness sought to be excluded in paragraph six must be completely reconciled with the amounts specified on the attached itemized statement(s) and must NOT exceed the estimated maximum cost of the facilities described in paragraph three. The format to be used for the itemized statement(s) is on pages 11 and 12.

b. For sanitary sewer debt proposed to be contracted, state in paragraph six:

i. The approximate date(s) when such debt (or portion(s) thereof) is proposed to be contracted.

NOTE: *The date upon which the debt is contracted is the date of the FIRST contract for the construction/reconstruction of the facility, or the date of the FIRST bond or note issued to finance the construction or reconstruction, whichever date is earlier.*

ii. Whether this indebtedness will be in the form of a contract(s) for construction, obligations, or a combination of the two.

7. If all or any part of the Indebtedness is evidenced by bonds, please include:

a. A bond maturity schedule, and
b. A statement in paragraph eight indicating the manner in which the debt service on the bonds will be paid (e.g., sewer rents, taxes, assessments.)

8. Pursuant to Local Finance Law, section 124.10(e), any revenues of the facility during the period when the exclusion is effective must be applied to, and actually used for, the payment of all costs of operation, maintenance and repairs for such period, and payments of the amounts required in such period for the interest on and amortization of or redemption of the indebtedness excluded, or such revenue must be deposited in a special fund to be used solely for such payments. Excess revenues may be used for any other lawful purposes of the municipality for which such revenues may be used.

9. The chief fiscal officer must cause a public notice to be published once in the official newspaper(s) of the municipality within 15 days AFTER filing the application with the State Comptroller. (*See*

suggested form on page 14). If the municipality has no official newspaper, the finance board of the municipality shall designate one or more newspapers having a general circulation in the municipality for the publication of the notice. The notice must state that the application has been filed with the State Comptroller and must include the date when it was filed. It must also contain a statement of the amount of outstanding debt, if any, to be excluded and a statement of the amount of proposed debt, if any, to be excluded if and when contracted. One **ORIGINAL** proof of publication, (i.e., AN ORIGINAL PRINTER'S AFFIDAVIT OF PUBLICATION WHICH MUST BE SIGNED, DATED AND NOTARIZED) must be filed in the State Comptroller's office as soon as possible, since a certificate cannot be issued until **TEN DAYS AFTER** the receipt of such proof.

NOTE: ***PLEASE DO NOT PUBLISH THE NOTICE UNTIL AFTER THE MUNICIPALITY HAS BEEN CONTACTED BY THE STATE COMPTROLLER'S OFFICE REGARDING THE ESTABLISHMENT OF AN OFFICIAL FILING DATE.***

10. A copy of the application, the itemized statements, and all other data and information submitted to the State Comptroller in support of the application must be filed in the office of the chief fiscal officer as public records.

REVIEW OF THE APPLICATION

After the application is filed with the State Comptroller's Office, the facts set forth therein are reviewed. Independent sources, such as the latest annual financial report of the municipality or the current municipal budget, may be used to verify the data contained in the application. If questions or discrepancies arise, or if additional data or information is required, the person who submitted the application, or other public officers, boards or agencies of the municipality, may be contacted.

If the State Comptroller determines that all or part of the indebtedness described in the application is NOT eligible for exclusion under the terms of the law, (e.g., if the debt is not debt described in section 124.10[a]), a statement of the reasons for such determination will be given to the municipality.

If the application is approved, the State Comptroller will issue a certificate to the municipality setting forth the amount of debt which may be excluded from the municipality's debt limit. The law provides that the certificate of the State Comptroller shall ***NOT BE ISSUED UNTIL TEN DAYS AFTER THE FILING OF THE PROOF OF PUBLICATION OF THE LEGAL NOTICE IN THIS OFFICE, AND MUST BE ISSUED WITHIN 45 DAYS AFTER THIS FILING DATE.*** Two copies of the certificate will be issued: One to be filed in the office of the chief fiscal officer of the municipality, and one to be filed in the Office of the State Comptroller.

The certificate of the Comptroller is conclusive and will be in effect so long as, and to the extent that, any of the indebtedness described in it is outstanding, or until the certificate is amended, modified, superseded or rescinded by another certificate of the Comptroller issued upon application of the municipality.

An exclusion granted pursuant to section 124.10 of the Local Finance Law will NOT affect or impair any pre-existing debt exclusion or the power to exclude indebtedness under other provisions of the law, except that if any exclusion has been granted pursuant to section 123.00 of the Local Finance Law for sanitary sewer debt for which an exclusion is granted pursuant to section 124.10 of the Local Finance Law, the exclusion pursuant to section 123.00 will cease to be applicable.

ITEMIZED STATEMENT OF OBLIGATIONS

Following is an itemized statement of OUTSTANDING AND/OR PROPOSED Indebtedness contracted by the _____ of _____ on or after January 1, 1962 and prior to January 1, 2034 for the Construction and/or Reconstruction of the Facilities mentioned in paragraph 3 of the foregoing Application:

Bonds, Bond Anticipation Notes and Capital Notes

Type of Obligation (1)	Original Principal Amount	Actual and/or Approximate Date of Issue (2)	Actual and/or Approximate Date of Final Maturity (2)	Actual and/or Estimated Interest Rate	Actual and/or Estimated Dates of Principal Payments (3)	Actual and/or Estimated Dates of Interest Payments (3)	Amount of Principal Outstanding as of Date of Application (4)	Amount of Exclusion Requested as of the Date of the Application
	$			%			$	

TOTAL: $_____

1. The following symbols may be used: SB – Serial Bonds; SIB – Statutory Installment Bonds; BAN – Bond Anticipation Notes; CN – Capital Notes.
2. Indicate the month, day and year when each Obligation was or will be issued, has matured or will mature.
3. State the month and day when such payments are to be made (e.g., June 15, or June 15 and December 15).
4. Include here ONLY indebtedness that is OUTSTANDING as of the date of application.

ITEMIZATED STATEMENT FOR CONTRACT INDEBTEDNESS

Following is a description of each item of Contract Indebtedness for Sanitary Sewer facilities incurred and/or proposed to be incurred on or after January 1, 1962 and prior to January 1, 2034. *These items remain UNPAID as of the Date of Application and are NOT evidenced by Outstanding Obligations listed on the preceding page of this Statement*:

Actual and/or Approximate Date of Contract (1)	**Names of Contract Creditors**	**Actual and/or Proposed Amount**	
		Originally Incurred	**Outstanding as of Date of Application**
	TOTAL:	$_____	$_____

1. Please indicate the month, day and year when each contract was signed (or is expected to be signed) by officials of the municipality.

SUGGESTED VERIFICATION FORM FOR APPLICATION AND ITEMIZED STATEMENTS PURSUANT TO SECTION 124.10 OF THE LOCAL FINANCE LAW

State of New York

County of _____ ss.

_____ being duly sworn, deposes and says:

That (s)he is the duly (elected) (appointed), qualified, and acting Chief Fiscal Officer of the (*County, City, Town, Village*) of _____ in the County of _____ New York : that (s)he prepared and has read the foregoing Application and Itemized Statements and knows the contents thereof; that the same is true to (his) (her) own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters (s)he believes it to be true.

(Signed)

(Title) _____

(Mail Address) _____

_____

Subscribed and sworn to before me this

_____

_____

Notary Public

SUGGESTED FORM OF LEGAL NOTICE PURSUANT TO SECTION 124.10 OF THE LOCAL FINANCE LAW

To be Inserted in Official or
Designated Newspaper(s) of the Municipality

The Chief Fiscal Officer of the *(County, City, Town, Village)* of _____ filed on *(date)* _____ in the Office of the State Comptroller an Application for Exclusion of *(Outstanding Sanitary Sewer Indebtedness in the Amount of $* _____ *and/or Proposed Sanitary Sewer Indebtedness in the Amount of $* _____) pursuant to Section 124.10 of the Finance Law. This Application is on file as a public record in the Office of the Chief Fiscal Officer.

Signed _____
Chief Fiscal Officer of the
(County, City, Town, or Village)