

# New York lawmakers seek to rein in investment in foreign debt

By Bill Mahoney

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New York lawmakers are pushing for a bill that would open the door to low-income countries trying to refinance their debt.

While supporters say the measure could provide massive relief to hundreds of millions of impoverished individuals worldwide, detractors argue that the measure would deal a crippling blow to global finance.

A majority of the world's sovereign debt owned by the private sector is controlled by investors based in New York — and estimates suggest that the proposal could impact [more than \\$850 billion](#) in debt from emerging markets globally

“When this idea was brought to me a few years ago, the notion seemed a little foreign,” said state Sen. [Gustavo Rivera](#) (D-Bronx). “But then it really focused on the fact that most of these predatory institutions are both authorized and regulated right here by the state of New York. So we can impact what they do here in the state, and by extension, we can impact what they do across the world.”

## WHAT'S IN THE BILL?

*This Pro Bill Analysis is based on the text of [A2970-A](#) as introduced on March 6 and [S5542-A](#) as introduced on Feb. 28.*

The Sovereign Debt Stability Act (Sec. 1) would amend the [New York Debtor and Creditor Law](#) to give debtor states two paths to filing claims with the state of New York in order to reorganize their finances.

Under one path, the debtor would need to argue that they require relief from “unsustainable debt” and would have to agree to cooperate with the International Monetary Fund “to devise an effective, efficient, timely and fair path back to sustainability” (Sec. 2).

Creditors would be notified by the filing country within a month. The debtor country would group their debts into different classes of claims and suggest a plan for adjusting the due dates, principal amounts and interest rates, as well as other terms that they believe would make the debt sustainable.

The creditors belonging to each of these classes would then vote on the country's settlement plan. If certain creditors — those holding “at least two-thirds in amount and more than one-half in number of the claims of such class” — agree to the plan, it would bind all the creditors in this class. This would mean that there couldn't be a recalcitrant hold-out who blocks a settlement. Debtor states would need to repay these loans before other debt.

The other proposed path would involve filing an agreement to meet “robust disclosure standards.” The debtor state would then only need to pay back the percentage of debt that would be recoverable under whatever standards would apply if the United States federal government were the debtor.

If passed, the measure would take effect immediately (Sec. 3).

## WHO ARE THE POWER PLAYERS?

The bill — sponsored by [Gustavo Rivera](#) (D-Bronx) in the Senate and [Patricia Fahy](#) (D-Albany) in the Assembly — has already been backed by dozens of legislators, including progressives and several with ties to territories and foreign states that have struggled with debt.

“We saw 600 schools close down in Puerto Rico,” said Assemblymember [Maritza Davila](#) (D-Brooklyn), who was born in that territory. “In the Congo, people can’t get enough to eat. It’s a game to these hedge funds. We need to fight back.”

The measure also has the support of anti-poverty groups like **Oxfam America**, and the concept was [backed by a coalition of African finance ministers](#) at a meeting in Addis Ababa, Ethiopia last year. The ministers [issued a call](#) for “for major sovereign debt issuance jurisdictions to require enhanced collective action clauses and enhanced force majeure clauses in all sovereign debt contracts and to implement comprehensive legislation to stop vulture funds in major creditor countries.”

But there have been plenty of opponents, too. A creditors’ association, the Credit Roundtable, — which includes companies like Fidelity, T. Rowe Price and Vanguard — warned that the proposal could destroy “the rules-based international order.”

“New York law is the gold standard of the commercial world because it enforces contract terms to the letter,” they wrote in [a letter last year](#). “Foreign states issue debt in New York, rather than in their own countries, because investors trust New York law and New York courts as neutral arbiters. New York will lose that hard-won reputation the moment these bills are enacted.”

## WHAT’S HAPPENED SO FAR?

The current situation has its roots in the medieval English common law doctrine of champerty, which prohibits buying debt for the sole purpose of suing over that debt.

Hedge fund manager Paul Singer had bought Peruvian debt for that purpose in the 1990s. A judge ultimately ruled against his suit over the debt he now owed after determining it ran afoul of this doctrine as codified in New York law.

Singer wound up lobbying New York to change the law, and a [bill passed in 2004](#) stating “if you buy debt that’s worth more than half a million dollars, you can litigate on it,” said the Strong Economy for All Coalition’s Michael Kink.

Advocates say that this has helped prompt more aggressive attempts by New Yorkers to get rich off the debt of struggling countries.

“First, what these hedge funds do is find a country about to default on their debt, then buy it up for a deep discount,” said Assemblymember [Jessica Gonzalez-Rojas](#) (D-Queens). “Then two, they refuse to engage in negotiations for a payment plan. Then three, they demand maximum profits from a country, and that often forces austerity measures. And in places like Brazil and Puerto Rico and Argentina, we see schools close, we see hospitals close, we see pensions cut.”

There have been a handful of bills in recent years that have attempted to regulate foreign debt investments governed by New York law. The most recent measure, introduced in recent weeks, is an attempt to combine some of those efforts in a focused version.

There’s also a bill, S5623, sponsored by Sen. [Liz Krueger](#) (D-Manhattan), that directly undoes the 2004 law on champerty.

## WHAT’S NEXT?

While the measure has won the support of dozens of Democrats in Albany, it remains to be seen whether it will be embraced by the numbers needed to pass it — and if so, whether the support will be strong enough to get the Legislature to take the time to debate this measure rather than spending time on subjects that more directly impact lawmakers’ constituents.

“That hasn’t really bubbled up in our conference,” said Assembly Speaker [Carl Heastie](#). “I know a few members have raised it but it hasn’t really bubbled up.

“It’s something to think about. Some members have brought it up, but I wouldn’t say an overwhelming majority of members have raised this issue.”

## WHAT ARE SOME STORIES ON THE BILL?

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