

New York State Public Authorities Law, Articles 1, 1-A, 8 (Title 28-AA only), 9 and 11

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Article 1 Short Title

Section 1. Short Title

This chapter shall be known as the public authorities law.

Section 2. Definitions

As used in this chapter:

1. "state authority" shall mean a public authority or public benefit corporation created by or existing under this chapter or any other law of the state of New York, with one or more of its members appointed by the governor or who serve as members by virtue of holding a civil office of the state, other than an interstate or international authority or public benefit corporation, including subsidiaries of such public authority or public benefit corporation.
2. "local authority" shall mean
 - (a) a public authority or public benefit corporation created by or existing under this chapter or any other law of the state of New York whose members do not hold a civil office of the state, are not appointed by the governor or are appointed by the governor specifically upon the recommendation of the local government or governments;
 - (b) a not-for-profit corporation affiliated with, sponsored by, or created by a county, city, town or village government;
 - (c) a local industrial developmental agency or authority or other local public benefit corporation; or
 - (d) an affiliate of such local authority.
3. "interstate or international authority" shall mean an international or interstate public authority created pursuant to agreement or compact with another state or with a foreign power, including any and all affiliates or subsidiaries.
4. "affiliate" or "affiliated with" shall mean a corporate body having substantially the same ownership or control as another corporate body.
5. "subsidiary" shall not include, for the purposes of this chapter, corporations that have been certified by the parent corporation to the entity created pursuant to section twenty-seven of the chapter of the laws of two thousand five which added this section as being inactive for the past twelve months, having an identical board of its parent corporation, or not having separate and independent operational control. Provided, however, the parent corporation, in response to any request, shall address any provision or provisions of this chapter.

Article 1-A New York State Public Authorities Control Board

Section 50. New York state public authorities control board; creation; procedure

1. The New York state public authorities control board is hereby created to have and exercise the powers, duties and prerogatives provided by the provisions of this chapter and any other provision of law.

2. The membership of the board shall consist of five persons appointed by the governor, of which one shall be upon the recommendation of the temporary president of the senate, one upon the recommendation of the speaker of the assembly, one upon the recommendation of the minority leader of the senate and one upon the recommendation of the minority leader of the assembly. The members appointed by the governor upon the recommendation of the minority leader of the senate and the minority leader of the assembly shall be non-voting members whose comments shall be entered upon any official record of board proceedings in the same manner as voting members' comments, unless objection is raised by any of the voting members in which case, notwithstanding any provision of law to the contrary, such comments by non-voting members shall not be so entered. The term of the members first appointed shall continue until January thirty-first, nineteen hundred seventy-seven, except that the term of the members first appointed upon the recommendations of the minority leader of the senate and the minority leader of the assembly shall continue until January thirty-first, nineteen hundred eighty-four, and thereafter their successors shall serve for a term of one year ending on January thirty-first in each year. Upon recommendation of the nominating party, the governor may replace any member in accordance with the provision contained herein for the appointment of members. The governor shall designate one of the members to serve as chairman. The board shall act by unanimous vote of the voting members of the board. Any determination of the board shall be evidenced by a certification thereof executed by all the voting members. Each member of the board shall be entitled to designate a representative to attend meetings of the board in his place, and to vote or otherwise act on his behalf in his absence. Notice of such designation shall be furnished in writing to the board by the designating member. A representative shall serve at the pleasure of the designating member during the member's term of office. A representative shall not be authorized to delegate any of his duties or functions to any other person.

3. Notwithstanding any inconsistent provisions of law, general, special or local, no officer or employee of the state, of any political subdivision of the state, of any governmental entity operating any public school or college or of any other public agency or instrumentality or unit of government which exercises governmental powers under the laws of the state, shall forfeit such office or employment by reason of acceptance or appointment as a member, representative, officer, employee or agent of the board nor shall service as such member, representative, officer, employee or agent of the board be deemed incompatible or in conflict with such office or employment. The members, their representatives, officers and staff to the board shall be deemed employees within the meaning of section seventeen of the public officers law.

4. The members of the board shall serve without salary or per diem allowance but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties pursuant to this section or other provision of law, provided however that such members and representatives are not, at the time such expenses are incurred, public employees otherwise entitled to such reimbursement.

Section 51. Powers, functions and duties of the New York state public authorities control board; limitations

1. The New York state public authorities control board shall have the power and it shall be its duty to receive applications for approval of the financing and construction of any project proposed by any of the following state public benefit corporations:

- a. New York state environmental facilities corporation
- b. New York state housing finance agency
- c. New York state medical care facilities finance agency
- d. Dormitory authority
- e. New York state urban development corporation
- f. Job development authority
- g. Battery park city authority
- h. New York state project finance agency
- i. State of New York mortgage agency
- j. New York state energy research and development authority
- k. Long Island Power Authority
- l. Albany Convention Center Authority

Any application made concerning a project shall include the terms, conditions and dates of the repayment of state appropriations authorized by law pursuant to a repayment agreement. Any subsidiary of, or corporation with the same members or directors as, a public benefit corporation subject to the provisions of this section shall also be subject to the provisions of this section. All applications and submissions to the board required to be made by a subsidiary shall be made on behalf of such subsidiary by the public benefit corporation which created the subsidiary. No public benefit corporation subject to the provisions of this section shall make any commitment, enter into any agreement or incur any indebtedness for the purpose of acquiring, constructing, or financing any project unless prior approval has been received from the board by such public benefit corporation as provided herein.

2. The board may require as part of such application such information as it deems necessary and shall act upon such application within a reasonable time. The board shall furnish the state comptroller with a copy of each such application within three days following receipt thereof by the board. The board shall not approve any such application prior to the earlier of

- (a) seven days following the receipt by the state comptroller of such application or
- (b) the receipt by the board of the state comptroller's comments on the application or his consent to an earlier determination by the board.

Reference to the state comptroller in this subdivision shall include any authorized representative of the state comptroller.

3. The board may approve applications only upon its determination that, with relation to any proposed project, there are commitments of funds sufficient to finance the acquisition and construction of such project. In determining the sufficiency of commitments of funds, the board may consider commitments of funds, projections of fees or other revenues and security, which may, in the discretion of the board, include collateral security sufficient to retire a proposed indebtedness or protect or indemnify against potential liabilities proposed to be undertaken. A copy of such determination shall be submitted to the chief executive officer of the appropriate public benefit corporation and the state comptroller.

4. Notwithstanding any other provisions of this section, the requirements of subdivisions one, two and three of this section shall not apply with regard to any project of the New York state environmental facilities corporation, the New York state housing finance agency, the New York state medical care facilities finance agency or the dormitory authority in progress on the first day of April, nineteen hundred seventy-six, with regard to any project of the New York state project finance agency or the New York state urban development corporation in progress on the first day of April, nineteen hundred seventy-eight, with regard to any project of the job development authority or the battery park city authority in progress on the first day of July, nineteen hundred eighty, and with regard to a project of any other public benefit corporation subject to the provisions of this section in progress on the first day of July, nineteen hundred eighty-three, as determined by the New York state public authorities control board whose affirmative determination shall be conclusive as to all matters of law and fact for the purpose of the limitations of this section.

5. Nothing contained in subdivisions one, two and three of this section shall limit the right or obligation of any public benefit corporation subject to the provisions of this section to comply with the provisions of any existing contract, including any existing contract with or for the benefit of the holders of any obligations of any public benefit corporation.

Article 8 (Title 28-AA only) Chautauqua, Cattaraugus, Allegany and Steuben Southern Tier Extension Railroad Authority (STERA enabling legislation)

Section 2642. Short title.

This title may be cited as the "Chautauqua, Cattaraugus, Allegany and Steuben southern tier extension railroad authority act".

Section 2642-a. Legislative findings and intent.

The legislature hereby finds and determines that:

1. The continued existence and strengthening of the system of railroads serving Chautauqua, Cattaraugus, Allegany and Steuben counties in New York state and Warren and Erie counties in the Commonwealth of Pennsylvania is essential to the long term viability of the economies, municipalities, and ways of life in these counties.
2. The viability and existence of the system of railroads serving Chautauqua, Cattaraugus, Allegany and Steuben counties in New York state and Warren and Erie counties in the Commonwealth of Pennsylvania is threatened by the dynamic economics of the railroad industry.
3. By creating the Chautauqua, Cattaraugus, Allegany and Steuben southern tier extension railroad authority, it is the intent of the legislature to preserve and enhance the system of railroads serving Chautauqua, Cattaraugus, Allegany and Steuben counties in New York state and Warren and Erie counties in the Commonwealth of Pennsylvania, so as to insure a healthy economy for these counties.

Section 2642-b. Definitions.

As used or referred to in this title, unless a different meaning appears from the context:

1. "Authority" shall mean the corporation created by section twenty-six hundred forty-two-c of this title.
2. "Authority facilities" shall mean the authority's railroad facilities and operations pursuant to joint service arrangements as defined in subdivision eight of this section.
3. "Commonwealth" shall mean the Commonwealth of Pennsylvania.
4. "Commonwealth agency" or "agency of the Commonwealth" shall mean any officer, department, board, commissioner, bureau, division, public benefit corporation, agency or instrumentality of the Commonwealth of Pennsylvania.
5. "Comptroller" shall mean the comptroller of the state of New York.
6. "Equipment" shall mean rolling stock, vehicles, motors, boilers, engines, wires, ways, conduits and mechanisms, machinery, tools, implements, materials, supplies, instruments and devices of every nature whatsoever used or useful for railroad and related transportation purposes or for the generation or transmission of motive power including but not limited to all power houses, and all apparatus and all devices for signaling, communications and ventilation as may be necessary, convenient or desirable for the operation of a railroad or related transportation facility.
7. "Federal government" shall mean the United States of America, and any officer, department, board, commission, bureau, division, corporation, agency or instrumentality thereof.
8. "Joint service arrangements" shall mean agreements between or among the authority and any common carrier or freight forwarder, the state, the Commonwealth, any state agency or agency of the

Commonwealth, the federal government, any other state or Commonwealth or agency or instrumentality thereof, any public authority of this or any other state, any participating county, or any political subdivision or municipality of this or any other state, relating to property, buildings, structures, facilities, services, rates, fares, classifications, divisions, allowances or charges, or rules or regulations pertaining thereto, for or in connection with or incidental to transportation in part in or upon railroad facilities located within the counties of Chautauqua, Cattaraugus, Allegany and Steuben and in part in or upon railroad facilities located outside said counties.

9. "Legislative body" or "legislative bodies" shall mean any or all of the governing boards of the counties of Chautauqua, Cattaraugus, Allegany and Steuben.

10. "Municipality" shall mean any county, including the counties of Chautauqua, Cattaraugus, Allegany and Steuben, city, town, village, school district, improvement district, any other such instrumentality, including an agency or public benefit corporation of the state, or any of the foregoing, or any combination thereof.

11. "Participating counties" shall mean those of the counties of Chautauqua, Cattaraugus, Allegany and Steuben that shall have appointed members of the authority.

12. "Railroad facilities" shall mean right-of-way and related trackage, rails, cars, locomotives, other rolling stock, signal, power, fuel, communication and ventilation systems, power plants, stations, terminals, parking lots, garages, warehouses, storage yards, intermodal facilities, repair and maintenance shops, yards, equipment and parts, offices and other real estate or personalty used or held for or incidental to the operation, rehabilitation or improvement of any railroad operating or to operate between points within the counties of Chautauqua, Cattaraugus, Allegany and Steuben or pursuant to joint service arrangements, including but not limited to buildings, structures, and areas notwithstanding that portions thereof may not be devoted to any railroad purpose other than the production of revenues available for the costs and expenses of all or any facilities of the authority.

13. "Real property" shall mean lands, structures, franchises and interests in land, waters, lands under water, riparian rights and air rights and any and all things and rights included within said term and includes not only fees simple absolute but also any and all lesser interests including but not limited to easements, rights-of-way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise.

14. "State" shall mean the state of New York.

15. "State agency" shall mean any officer, department, board, commissioner, bureau, division, public benefit corporation, agency or instrumentality of the state of New York.

16. "Southern tier extension railroad line" shall mean the railroad line generally described as located between the city of Hornell, New York (Cass street interlocking, at approximately milepost 331.8) and the New York-Pennsylvania state line in the county of Chautauqua.

Section 2642-c. Chautauqua, Cattaraugus, Allegany and Steuben southern tier extension railroad authority.

1. There is hereby created the "Chautauqua, Cattaraugus, Allegany and Steuben southern tier extension railroad authority" which shall be a body corporate and politic constituting a public benefit corporation.

2. The authority shall continue for thirty years from the effective date of this title, or so long as it shall have bonds or other obligations outstanding or until its existence shall otherwise be terminated by law.

Upon the termination of the existence of the authority, all its rights and properties shall pass to and be vested in the participating counties pursuant to any agreements among the participating counties and the authority.

3. The authority shall adopt by-laws governing its operation and keep a record of its resolutions, transactions, findings and determinations, which record shall be a public record.

4. The authority shall consist of the following fourteen members:

(a) The county legislative bodies of Chautauqua, Cattaraugus, Allegany and Steuben counties each shall appoint three voting members of the authority who shall be residents of such county, upon the recommendation of the chief executive (county executive or chair of the county legislative body) of each such county; and

(b) The southern tier west regional planning and development board, upon the recommendation of the chairperson of such board, shall appoint one member of the authority, who shall be a resident of one of the counties of Chautauqua, Cattaraugus, Allegany or Steuben.

(c) The Seneca Nation of Indians may appoint a member of such Nation to serve in an advisory non-voting capacity.

5. The term of office of members of the authority shall be three years. Four of the initial members of the authority shall serve a one year term, four shall serve a two year term and six, including the members appointed by the southern tier west regional planning and development board, and the Seneca Nation of Indians shall serve a three year term, provided that at the inception of the authority, each county shall appoint one member to hold office for three years, one for two years and one for one year.

6. All members shall continue to hold office until their successors are appointed and qualified. The resignation of any member shall be filed with the appointing authority and shall be effective when so filed. Vacancies occurring otherwise than by expiration of term of office shall be filled for the unexpired term in the same manner as provided for the original appointment.

7. The chairperson, vice-chairperson, secretary, and other necessary officers shall be named by a majority vote of all the voting members to serve for such period as the members shall decide. The chairperson shall preside over the meetings of the authority and shall appoint members of the authority to committees established by the authority to assist the authority in carrying out its duties.

8. Any member of the authority may be removed by resolution of the entity which appointed such member either for cause or for non-compliance with minimum requirements relating to meeting attendance and other criteria as may be established by resolution of such entity.

9. No person shall be precluded from serving as a member of the authority as appointed by a county legislative body, the southern tier west regional planning and development board or the Seneca Nation of Indians pursuant to this section because such member is an elected or appointed official of a municipality, except that no member of the authority shall vote on any matter before the authority which has been the subject of a proposal, application or vote before the municipality where he or she serves in such elected or appointed capacity.

10. The members of the authority shall receive no salary or compensation for their services, but may be reimbursed for authorized, actual and necessary travel and expenditures.

11. A majority of the whole number of voting members of the authority then in office shall constitute a quorum for the transaction of any business or the exercise of any power of the authority.

Notwithstanding any provision of statute or law to the contrary and except as otherwise specified in this title, for the transaction of any business or the exercise of any power of the authority, the authority shall have power to act by a majority of the whole number of voting members of the authority.

12. The authority shall be deemed a state agency for purposes of section seventy-four of the public officers law, provided, however, that no non-voting member of the authority shall be deemed an officer or employee of a state agency.

Section 2642-d. Purposes of the authority.

1. The purposes of the authority shall be the continuance, further development and improvement of railroad transportation and other services related thereto within the counties of Chautauqua, Cattaraugus, Allegany and Steuben, in accordance with the provisions of this title. It shall be the further purpose of the authority to develop and implement a unified railroad transportation policy and strategy for such counties.

2. It is hereby found and declared that such purposes are in all respects for the benefit of the people of the state and the authority shall be regarded as performing an essential governmental function in carrying out its purposes and in exercising the powers granted by this title.

Section 2642-e. General powers of the authority.

Except as otherwise limited by this title, the authority shall have power:

1. To sue and be sued;
2. To have a seal and alter the same at pleasure;
3. To borrow money;
4. To invest any funds held in reserve or sinking funds, or any monies not required for immediate use or disbursement, at the discretion of the authority, in obligations in which the state comptroller may invest pursuant to section ninety-eight or ninety-eight-a of the state finance law;
5. To make and alter by-laws for its organization and internal management, and rules and regulations governing the exercise of its powers and the fulfillment of its purposes under this title;
6. To enter into contracts and leases and to execute all instruments necessary or convenient;
7. To acquire, hold and dispose of real or personal property in the exercise of its powers for its corporate purposes;
8. The authority may, whenever it shall determine that it is not in conflict with the interests or purposes of the authority, rent, lease or grant easements or other rights in, any land or property of the authority, including the granting of municipal utility easements;
9. To appoint such officers and employees as it may require for the performance of its duties, and to fix and determine their qualifications, duties, and compensation and to retain or employ counsel, auditors, engineers and private consultants on a contract basis or otherwise for rendering professional or technical services and advice; such counsel, auditors, engineers, and private consultants, officers and employees may not be a member of the authority;
10. To make plans, surveys, and studies necessary, convenient or desirable to the effectuation of the purposes and powers of the authority and to prepare recommendations in regard thereto;

11. To contract for and accept any gifts or grants, subsidies or loans of funds or property or financial or other aid in any form from the federal or state government or Commonwealth government or any agency or instrumentality thereof, or from any other source, public or private, and to comply, subject to the provisions of this title, with the terms and conditions thereof;

12. To designate the depositories of its money;

13. To establish its fiscal year; and

14. To do all things necessary or convenient or desirable to carry out its purposes and exercise the powers expressly given in this title.

Section 2642-f. Special powers of the authority.

In order to effectuate the purposes of this title:

1. The authority may acquire, by purchase, gift, grant, transfer, contract or lease, any railroad facility, wholly or partially within the counties of Chautauqua, Cattaraugus, Allegany and Steuben or any part thereof, or the use thereof, and may enter into any joint service arrangements as provided in this section. Any such acquisition or joint service arrangement shall be authorized only by resolution of the authority approved by not less than a majority of the whole number of voting members of the authority. In addition to and not in limitation of any other power conferred upon the authority by the provisions of this title, the authority is hereby empowered and authorized in respect of any property and assets at any time owned or held by, or under the jurisdiction of, the state, the Commonwealth, any political subdivision thereof, or any private or other public concern, to accept and receive any such interest therein as it may have been or may hereafter be designated by the state, the Commonwealth, any political subdivision thereof, or any other public or private concern, by law or other lawful means to receive, and in respect thereof, except as otherwise provided by the designating statute or contractual instrument, it shall have and exercise all of the powers and jurisdiction herein conferred upon it in respect of any other property, rights, assets, facilities and projects in any other manner acquired or from any other source received by it pursuant to the provisions of this title.

2. The authority may on such terms and conditions as the authority may determine necessary, convenient or desirable itself establish, construct, effectuate, operate, maintain, renovate, improve, extend or repair any such railroad facility, or may provide for such establishment, construction, effectuation, operation, maintenance, renovation, improvement, extension or repair by contract, lease, or other arrangement on such terms as the authority may deem necessary, convenient or desirable with any person, including, but not limited to, any common carrier or freight forwarder or other private for-profit firm, the state, the Commonwealth, any agency or the state or Commonwealth, the federal government, any other state or agency or instrumentality thereof, any non-profit corporation, any public authority of this or any other state or any political subdivision or municipality of the state. In connection with the operation of any such railroad facility, the authority may establish, construct, effectuate, operate, maintain, renovate, improve, extend or repair or may provide by contract, lease or other arrangement for the establishment, construction, effectuation, operation, maintenance, renovation, improvement, extension or repair of any related services and activities it deems necessary, convenient or desirable, including, but not limited to, the transportation and storage of freight and the United States mail, feeder and connecting transportation, parking areas, transportation centers, stations and related facilities.

3. The authority may establish, levy and collect or cause to be established, levied and collected and, in the case of a joint service arrangement, join with others in the establishment, levy and collection of such fares, tolls, rentals, rates, charges and other fees as it may deem necessary, convenient or desirable for

the use and operation of any railroad facility and related services operated by the authority or under contract, lease or other arrangement, including joint service arrangements, with the authority.

4. The authority may establish and, in the case of joint service arrangements, join with others in the establishment of such schedules and standards of operations and such other rules and regulations including but not limited to rules and regulations governing the conduct and safety of the public as it may deem necessary, convenient or desirable for the use and operation of any railroad facility and related services operated by the authority or under contract, lease or other arrangement, including joint service arrangements, with the authority.

5. The authority may acquire, hold, own, lease, establish, construct, effectuate, operate, maintain, renovate, improve, extend or repair any of its facilities.

6. The authority, in its own name, may apply for and receive and accept grants of property, money and services and other assistance offered or made available to it by any person, government or agency which it may use to meet capital or operating expenses and for any other use within the scope of its powers, and to negotiate for the same upon such terms and conditions as the authority may determine to be necessary, convenient or desirable.

7. The authority may do all things it deems necessary, convenient or desirable to manage, control and direct the maintenance and operation of railroad facilities, equipment or real property operated by or under contract, lease or other arrangement with the authority. Except as hereinafter specially provided, no municipality or political subdivision, including but not limited to a county, city, village, town or school or other district shall have jurisdiction over any facilities of the authority or any of its activities or operations. The local laws, resolutions, ordinances, rules and regulations of a municipality or political subdivision in the state conflicting with this title or any rule or regulation of the authority, shall not be applicable to the activities or operations of the authority, or the facilities of the authority, except such facilities that are devoted to purposes other than transportation purposes. The authority may agree with the New York state department of transportation for the execution by such department of any grade crossing elimination project or any grade crossing separation reconstruction project along any railroad facility operated by the authority or under contract, lease or other arrangement with the authority. Any such project shall be executed as provided in article ten of the transportation law and the railroad law, respectively, and the costs of any such project shall be borne as provided in such laws.

Section 2642-g. Cooperation and assistance of other agencies.

1. To avoid duplication of effort and in the interests of economy, the authority may make use of existing studies, surveys, plans, data and other materials in the possession of any state agency or any municipality or political subdivision of the state. Each such agency, municipality or subdivision located in or serving some portion of the state is hereby authorized to make the same available to the authority and otherwise to assist it in the performance of its functions. At the request of the authority, each such agency, municipality or subdivision located in or serving some portion of the state which is engaged in railroad or other transportation activities or in land use or development planning, or which is charged with the duty of providing or regulating any transportation facility or any other public facility, is further authorized to provide the authority with information regarding its plans and programs affecting railroad transportation within the participating counties so that the authority may have available to it current information with respect thereto. The officers and personnel of such agencies, municipalities or subdivisions, and of any other government or agency whatever, may serve at the request of the authority upon such advisory committees as the authority shall determine to create and such officers and personnel may serve upon such committees without forfeiture of office or employment and with no loss or diminution in the compensation, status, rights and privileges which they otherwise enjoy.

2. Notwithstanding any contrary provision of law, every municipality located in the counties of Chautauqua, Cattaraugus, Allegany or Steuben is authorized and empowered to consent to the use by the authority of any real or personal property owned by any such municipality and necessary, convenient or desirable in the opinion of the authority for any of the facilities or projects authorized under this title, including such real property as has already been devoted to a public use, and as an incident to such consent, to lease or otherwise transfer and convey to the authority any such real or personal property upon such terms as may be determined by the authority and any such municipality. Every such municipality also is authorized and empowered, as an incident to such consent, to vest in the authority the control, possession, operation, maintenance, rents, charges and any and all other revenues of any facilities now owned by any such municipality, the title to such facilities remaining in such municipality.

Section 2642-h. Exemption from taxation.

1. It is hereby determined that the creation of the authority and the carrying out of its purposes under this title are in all respects for the benefit of the people of the state of New York and is a public purpose. Accordingly, the authority shall be regarded as performing an essential governmental function in the exercise of the powers conferred upon it by this title, and the authority shall not be required to pay any fees, taxes, special ad valorem levies or assessments of any kind, whether state or local, including but not limited to fees, taxes, special ad valorem levies or assessments on real property, franchise taxes, sales taxes or other taxes, upon or with respect to any property owned by it or under its jurisdiction, control or supervision, or upon the uses thereof, or upon or with respect to its activities or operations in furtherance of the powers conferred upon it by this title, or upon or with respect to any fares, tolls, rentals, rates, charges, fees, revenues or other income received by the authority.

2. Notwithstanding subdivision one of this section, the authority or any lessees of the authority shall be required to pay water and sewer fees, water and sewer assessments or water and sewer special ad valorem levies.

3. The authority may pay, or may enter into agreements with any municipality, including school districts, to pay, a sum or sums annually or otherwise or to provide other considerations with respect to real property owned by the authority located within such municipality.

Section 2642-i. Advances on behalf of authority; transfer of property to authority; acquisition of property for authority.

1. In addition to any powers granted to it by law, any participating county may by resolution advance sums of money to or on behalf of the authority to defray costs or expenses of the authority to be incurred prior to the first issuance of bonds. Subject to the rights of any bondholders, the moneys so appropriated may be repaid by the authority to the participating county at such time and in such manner as may be agreed upon between the authority and the participating county.

2. Any participating county or any municipality along the southern tier extension railroad line may by resolution give, grant, sell, convey, lend, or license the use of or lease to the authority any property or facility which is useful to the authority in order to carry out its powers under this title. Any such transfer of property shall be upon such terms and conditions, subject to the rights of any bondholders, as the authority and the participating county or the municipality may agree.

3. Notwithstanding the provisions of any other law, general, special, or local, real property acquired by the authority or any participating county from the state may be used for any corporate purpose of the authority.

Section 2642-j. New York state and local employees` retirement system rights of employees; civil service.

1. In accordance with the provisions of section seventy of the civil service law, any officer or employee of a municipality transferred to the authority shall be eligible for such transfer and appointment, without further examination, to applicable offices, positions and employment under the authority. Any such officers or employees so transferred to the authority pursuant to this section, who are members of or benefit under any existing pension or retirement fund or system, shall continue to have all rights, privileges, obligations and status with respect to such fund or system as are now prescribed by law.
2. Nothing contained in this title shall be construed (a) to diminish the rights of employees pursuant to a collective bargaining agreement or (b) to affect existing law with respect to an application to the public employment relations board seeking a designation by the board that certain persons are managerial or confidential.

Section 2642-k. Equal employment opportunity.

The authority shall ensure that all employees or applicants for employment are afforded equal opportunity employment without discrimination on any basis prohibited under subdivision two of section forty-c of the civil rights law.

Section 2642-l. Monies of the authority.

All monies of the authority from whatever source derived shall be paid to the treasurer of the authority and shall be deposited forthwith in an interest-bearing account in a bank or banks designated by the authority. The monies in such accounts shall be paid out or withdrawn on the order of such person or persons as the authority may authorize to make such requisitions. All deposits of such monies shall be secured by obligations of the United States or of the state or of any municipality of a market value equal at all times to the amount on deposit and all banks and trust companies are authorized to give such security for such deposits. To the extent practicable, consistent with the cash requirements of the authority, all such monies shall be deposited in interest-bearing accounts. Any monies of the authority not required for immediate use or disbursement may, be invested in accordance with section ninety-eight or ninety-eight-a of the state finance law.

Section 2642-m. Contracts.

1. All contracts for the construction, reconstruction, rehabilitation or improvement of buildings let by the authority shall comply with the provisions of section two hundred twenty of the labor law and shall also be subject to the provisions of law applicable to contracts let by a municipal corporation, except as otherwise provided herein.
2. All contracts for the construction, reconstruction, rehabilitation or improvement of buildings let by the authority shall be in conformity with the applicable provisions of section one hundred thirty-five of the state finance law.
3. The authority may, in its discretion, assign contracts for supervision and coordination to the successful bidder for any subdivision of work for which the authority receives bids. Any construction contract awarded by the authority shall contain such other terms and conditions as the authority may deem desirable. The authority shall award any construction contract involving an expenditure of more than five thousand dollars to the lowest bidder who, in its opinion, is qualified to perform the work required and who is responsible and reliable. The authority may, however, reject any or all bids or

waive any informality in a bid if it believes that the public interest will be promoted thereby. The authority may reject any bid, if, in its judgment, the business and technical organization, plant, resources, financial standing, or experience of the bidder justifies such rejection in view of the work to be performed.

4. For the purposes of article fifteen-A of the executive law only, the authority shall be deemed a state agency as that term is used in such article, and all contracts for procurement, design, construction, services and materials shall be deemed state contracts within the meaning of that term as set forth in such article.

Section 2642-n. Annual report and audit.

In conformity with the provisions of section five of article ten of the constitution, the accounts of the authority shall be subject to the supervision of the state comptroller and an annual audit shall be performed by an independent certified public accountant. The authority shall annually submit to the county legislatures, county executives, governor and the state comptroller and to the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee a detailed report pursuant to the provisions of section twenty-eight hundred of this chapter, and a copy of such report shall be filed with the clerk of the county legislature and the county executives; provided further that a copy of such report shall be submitted to the southern tier west regional planning and development board.

Section 2642-o. Defense and indemnification.

1. The authority shall not execute any of its powers except as necessary to commence its corporate existence, until it has elected to make the provision of section eighteen of the public officers law applicable to its employees (as such term is defined in section eighteen of the public officers law) pursuant to subdivision two of such section; provided, however, that nothing contained within this section shall be deemed to permit the authority to extend the provisions of section eighteen of the public officers law upon any independent contractor.

2. Neither the members of the authority, nor any participating county, municipality, officer or employee acting on the authority's behalf, while acting within the scope of his, her or its authority, shall be subject to any personal liability resulting from the construction, maintenance or operation of any of the properties of the authority or from carrying out any of the powers expressly given in this title; provided, however, that this shall not be held to apply to any independent contractor.

Section 2642-p. Action by or against the authority.

1. Except in an action for wrongful death, no action or special proceeding shall be prosecuted or maintained against the authority, its members, officers or employees for personal injury or damage to real or personal property alleged to have been sustained by reason of the negligence, tort or wrongful act of the authority or of any member, officer, agent or employee thereof, unless (a) notice of claim shall have been made and served upon the authority within the time limit set by and in compliance with section fifty-e of the general municipal law, (b) it shall appear by and as an allegation in the complaint or moving papers that at least thirty days have elapsed since the service of such notice and that adjustment or payment thereof has been neglected or refused, and (c) the action or special proceeding shall be commenced within one year and ninety days after the happening of the event upon which the claim is based. An action against the authority for wrongful death shall be commenced in accordance with the notice of claim and time limitation provisions of title eleven of article nine of this chapter.

2. Whenever a notice of claim is served upon the authority, it shall have the right to demand an examination of the claimant relative to the occurrence and extent of the injuries or damages for which claim is made, in accordance with the provisions of section fifty-h of the general municipal law.
3. The authority shall have power to settle or adjust all claims in favor of or against the authority.
4. Any action or proceeding to which the authority or the people of the state may be parties, in which any question arises as to the validity of this title, shall be preferred over all other civil causes of action or cases, except election causes of action or cases, in all courts of the state and shall be heard and determined in preference to all other civil business pending therein except election causes, irrespective of position on the calendar. The same preference shall be granted upon application of the authority or its counsel in any action or proceeding questioning the validity of this title in which the authority may be allowed to intervene. The venue of any such action or proceeding shall be laid in the supreme court of any of the participating counties.
5. The rate of interest to be paid by the authority upon any judgment for which it is liable, shall be the rate prescribed by section five thousand four of the civil practice law and rules.
6. All actions or proceedings against the authority of whatever nature shall be brought in a supreme court in any of the participating counties.

Section 2642-q. Track, bridge, signal, station and other facility operation and maintenance.

The operation, maintenance and use of track, bridges, signals, freight stations, passenger stations and other facilities shall be public purposes of the authority and the participating counties. The total cost to the authority of operation, maintenance and use of each track, bridge, signal, freight station, passenger station and other facility within the counties of the district located in the state and serviced by one or more railroad facilities of the authority or corporations, including the buildings, appurtenances, platforms, lands and approaches incidental or adjacent thereto, shall be borne by the authority.

Section 2642-r. State, participating counties, and municipalities not liable for obligations of authority.

1. Neither the state, the participating counties, nor any municipality or public corporation shall be liable on any bond, note or other obligation of the authority, and such bonds, notes or other obligations shall not be debts of the state, the participating counties, nor any municipality or public corporation, and such bonds, notes or other obligations shall contain a statement to such effect.
2. Nothing in this title shall be construed to obligate the state in any way in connection with the operations and obligations of the authority.

Section 2642-s. Effect of inconsistent provisions.

Insofar as the provisions of this title are inconsistent with the provisions of any other act, general or special, or of a county charter, any local law, ordinance or resolution of a municipality, the provisions of this title shall be controlling. Nothing contained in this section shall be held to supplement or otherwise expand the powers or duties of the authority otherwise set forth in this title.

Article 9 General Provisions

Title 1 Reports by Public Authorities

Section 2800. Annual reports by authorities

1. State authorities.

(a) For the purpose of furnishing the state with systematic information regarding the status and the activities of public authorities, every state authority continued or created by this chapter or any other chapter of the laws of the state of New York shall submit to the governor, the chairman and ranking minority member of the senate finance committee, the chairman and ranking minority member of the assembly ways and means committee and the state comptroller, within ninety days after the end of its fiscal year, a complete and detailed report or reports setting forth:

- (1) its operations and accomplishments;
 - (2) its receipts and disbursements, or revenues and expenses, during such fiscal year in accordance with the categories or classifications established by such authority for its own operating and capital outlay purposes;
 - (3) its assets and liabilities at the end of its fiscal year including the status of reserve, depreciation, special or other funds and including the receipts and payments of these funds;
 - (4) a schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year as part of a schedule of debt issuance that includes the date of issuance, term, amount, interest rate and means of repayment. Additionally, the debt schedule shall also include all refinancings, calls, refundings, defeasements and interest rate exchange or other such agreements, and for any debt issued during the reporting year, the schedule shall also include a detailed list of costs of issuance for such debt;
 - (5) a compensation schedule that shall include, by position, title and name of the person holding such position or title, the salary, compensation, allowance and/or benefits provided to any officer, director or employee in a decision making or managerial position of such authority whose salary is in excess of one hundred thousand dollars;
 - (6) the projects undertaken by such authority during the past year;
 - (7) a listing of
 - (i) all real property of such authority having an estimated fair market value in excess of fifteen thousand dollars that the authority intends to dispose of;
 - (ii) all such property held by the authority at the end of the period covered by the report; and
 - (iii) all such property disposed of during such period. The report shall contain an estimate of fair market value for all such property held by the authority at the end of the period and the price received by the authority and the name of the purchaser for all such property sold by the authority during such period;
 - (8) such authority's code of ethics; and
 - (9) an assessment of the effectiveness of its internal control structure and procedures.
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(b) To the extent practicable, each state authority shall make accessible to the public via its official internet web site documentation pertaining to its mission, current activities, most recent annual financial reports, current year budget and its most recent independent audit report unless such information is covered by subdivision two of section eighty-seven of the public officers law.

2. Local authorities.

(a) Every local authority, continued or created by this chapter or any other chapter of the laws of the state of New York shall submit to the chief executive officer, the chief fiscal officer, the chairperson of the legislative body of the local government or local governments and the entity established pursuant to section twenty-seven of the chapter of the laws of two thousand five which added this subdivision, within ninety days after the end of its fiscal year, a complete and detailed report or reports setting forth:

- (1) its operations and accomplishments;
- (2) its receipts and disbursements, or revenues and expenses, during such fiscal year in accordance with the categories or classifications established by such authority for its own operating and capital outlay purposes;
- (3) its assets and liabilities at the end of its fiscal year including the status of reserve, depreciation, special or other funds and including the receipts and payments of these funds;
- (4) a schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year as part of a schedule of debt issuance that includes the date of issuance, term, amount, interest rate and means of repayment. Additionally, the debt schedule shall also include all refinancings, calls, refundings, defeasements and interest rate exchange or other such agreements, and for any debt issued during the reporting year, the schedule shall also include a detailed list of costs of issuance for such debt;
- (5) a compensation schedule that shall include, by position, title and name of the person holding such position or title, the salary, compensation, allowance and/or benefits provided to any officer, director or employee in a decision making or managerial position of such authority whose salary is in excess of one hundred thousand dollars;
- (6) the projects undertaken by such authority during the past year;
- (7) a listing of
 - (i) all real property of such authority having an estimated fair market value in excess of fifteen thousand dollars that the authority intends to dispose of;
 - (ii) all such property held by the authority at the end of the period covered by the report; and
 - (iii) all such property disposed of during such period. The report shall contain an estimate of fair market value for all such property held by the authority at the end of the period and the price received by the authority and the name of the purchaser for all such property sold by the authority during such period;
- (8) such authority's code of ethics; and
- (9) an assessment of the effectiveness of its internal control structure and procedures.

(b) To the extent practicable, each local authority shall make accessible to the public via its official internet web site documentation pertaining to its mission, current activities, most recent annual financial reports, current year budget and its most recent independent audit report unless such information is covered by subdivision two of section eighty-seven of the public officers law.

3. Every financial report submitted under this section shall be approved by the board and shall be certified in writing by the chief executive officer and the chief financial officer of such authority that based on the officer's knowledge

(a) the information provided therein is accurate, correct and does not contain any untrue statement of material fact;

(b) does not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made; and

(c) fairly presents in all material respects the financial condition and results of operations of the authority as of, and for, the periods presented in the financial statements.

Section 2801. Budget reports by authorities

1. State authorities. Every state authority or commission heretofore or hereafter continued or created by this chapter or any other chapter of the laws of the state of New York shall submit to the governor, chairman and ranking minority member of the senate finance committee, and chairman and ranking minority member of the assembly ways and means committee, for their information, annually not less than ninety days before the commencement of its fiscal year, in the form submitted to its members or trustees, budget information on operations and capital construction setting forth the estimated receipts and expenditures for the next fiscal year and the current fiscal year, and the actual receipts and expenditures for the last completed fiscal year.

2. Local authorities. For the local authority fiscal year ending on or after December thirty-first, two thousand seven and annually thereafter, every local authority heretofore or hereafter continued or created by this chapter or any other chapter of the laws of the state of New York shall submit to the chief executive officer, the chief fiscal officer, the chairperson of the legislative body of the local government or governments and the entity established pursuant to section twenty-seven of the chapter of the laws of two thousand five which added this subdivision, for their information, annually not less than sixty days before the commencement of its fiscal year, in the form submitted to its members or trustees, budget information on operations and capital construction setting forth the estimated receipts and expenditures for the next fiscal year and the current fiscal year, and the actual receipts and expenditures for the last completed fiscal year.

Section 2802. Independent audits and audit reports of authorities

1. State authorities. Every state authority or commission heretofore or hereafter continued or created by this chapter or any other chapter of the laws of the state of New York shall submit to the governor, chairman and ranking minority member of the senate finance committee, chairman and ranking minority member of the assembly ways and means committee and the state comptroller, within thirty days after receipt thereof by such authority, a copy of the annual independent audit report, performed by a certified public accounting firm in accordance with generally accepted government auditing standards, and management letter and any other external examination of the books and accounts of such authority other than copies of the reports of any examinations made by the state comptroller.

2. Local authorities. For the local authority fiscal year ending on or after December thirty-first, two thousand seven and annually thereafter, every local authority heretofore or hereafter continued or created by this chapter or any other chapter of the laws of the state of New York shall submit to the chief executive officer, the chief fiscal officer, the chairperson of the legislative body of the local government or local governments and to the entity established pursuant to section twenty-seven of the chapter of the laws of two thousand five which added this subdivision, within thirty days after receipt thereof by such authority, a copy of the annual independent audit report, performed by a certified public accounting firm in accordance with generally accepted government auditing standards, and management letter and any other external examination of the books and accounts of such authority other than copies of the reports of examinations made by the state comptroller.

3. Each certified independent public accounting firm that performs for any state or local authority any audit required by this chapter shall timely report to the audit committee of such authority:

(a) all critical accounting policies and practices to be used;

(b) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of such authority, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the certified independent public accounting firm; and

(c) other material written communications between the certified independent public accounting firm and the management of such authority, such as the management letter along with management's response or plan of corrective action, material corrections identified or schedule of unadjusted differences, where applicable.

4. Notwithstanding any other provision of law to the contrary, the certified independent public accounting firm providing such authority's annual independent audit will be prohibited in providing audit services to the respective authority if the lead (or coordinating) audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, has performed audit services for that issuer in each of the five previous fiscal years of such authority.

5. The certified independent public accounting firm performing such authority's audit shall be prohibited from performing any non-audit services to such authority contemporaneously with the audit, unless receiving previous written approval by the audit committee including:

(a) bookkeeping or other services related to the accounting records or financial statements of such authority;

(b) financial information systems design and implementation;

(c) appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

(d) actuarial services;

(e) internal audit outsourcing services;

(f) management functions or human services;

(g) broker or dealer, investment advisor, or investment banking services; and

(h) legal services and expert services unrelated to the audit.

6. It shall be prohibited for any certified independent public accounting firm to perform for such authority any audit service if the chief executive officer, comptroller, chief financial officer, chief accounting officer, or any other person serving in an equivalent position for such authority, was

employed by that certified independent public accounting firm and participated in any capacity in the audit of such authority during the one year period preceding the date of the initiation of the audit.

7. Notwithstanding any provision of law to the contrary, a public authority may exempt information from disclosure or report, if the counsel of such authority deems that such information is covered by subdivision two of section eighty-seven of the public officers law.

Section 2803. Examination of the books and accounts of public authorities by the state comptroller

Notwithstanding any other provision of this chapter, the state comptroller shall, from time to time but not less than once in every five years, examine the books and accounts of every authority or commission heretofore or hereafter continued or created by this chapter, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other matters relating to its financial standing. In lieu of such an examination, the state comptroller is hereby authorized to accept from every such authority or commission an external examination of its books and accounts made at the request of such authority or commission.

Section 2804. Financial disclosure by public authorities or commissions prior to toll or fare increase

1. Notwithstanding any inconsistent provision of this chapter or of any other general, special or local law, every authority or commission heretofore or hereafter continued or created by this chapter, except those excluded from the operation of this section by subdivision four, having jurisdiction over highway, bridge or tunnel facilities shall submit to the governor, comptroller, chairman of the senate finance committee, chairman of the assembly ways and means committee and ranking minority member of each of such committees, not less than one hundred twenty days prior to the proposed date of any future increase in fees, tolls or other charges for the use of any such highway, bridge or tunnel facilities, or the imposition of tolls or fees at such a location which is toll or fee free, a detailed report setting forth:

(a) the need for such increase or imposition;

(b) its receipts and disbursements, or revenues and expenses, during the prior three fiscal years, or so much thereof as it may have been in existence, in accordance with the categories or classifications established by such authority or commission for its own operating and capital outlay purposes;

(c) its assets and liabilities at the end of its last fiscal year including the status of reserve, depreciation, special or other funds and including the receipts and payments of these funds;

(d) a schedule of bonds and notes outstanding at the end of its fiscal year and their redemption dates, together with a statement of the amounts redeemed and incurred during such fiscal year;

(e) information on future authority or commission operations, debt service and capital construction, together with estimated receipts and expenditures for the next five fiscal years without reference to such proposed increase or imposition;

(f) projections and estimates as to the effect which the proposed increase or imposition will have on the future use of the facilities, and an estimate of the revenues which will accrue to the authority or commission as the result of the proposed increase or imposition.

2. The comptroller shall review any proposed increase or imposition in fees, tolls or other charges, and the report required by subdivision one of this section and within sixty days make public a report of his findings, conclusions and recommendations. A copy of the comptroller's report shall be sent to the

authority or commission, the governor, chairman of the senate finance committee, chairman of the assembly ways and means committee and ranking minority member of each of such committees.

3. Every authority or commission shall hold a public hearing or hearings after receipt of the report of the comptroller required by subdivision two of this section not less than fifteen days prior to the effective date of such increase or imposition. Where the increase sought is or constitutes a portion of a general statewide increase, three hearings across the state shall be held. Where the increase or imposition is applicable only to a specific facility or segment, one hearing in the affected area shall be held. Notice of each hearing shall be given to the governor, comptroller, and each member of the legislature at least ten days prior to each such hearing, and shall be published at least once in two newspapers of daily circulation in the area where each hearing is to be held at least ten days prior to each such hearing. All newspapers shall be selected by the authority or commission. Copies of the proposed increase or imposition, the reports required by subdivisions one and two of this section shall be available for public inspection during a period of fifteen days prior to each hearing at the office or offices of the authority or commission and at a public facility in each area where a hearing is to be held. Following such public hearing or hearings, the authority or commission shall reconsider the proposed increase or imposition and may rescind, change or modify the proposal as it then deems necessary or advisable.

4. This section shall not be applicable to any authority or commission whose existence and jurisdiction is fixed by compact, treaty, action or agreement with other states or nations.

Section 2805. Reports and publications by authorities

Every authority or commission heretofore or hereafter continued or created shall, in accordance with the provisions of section one hundred sixty-four-a of the executive law and the regulations promulgated pursuant thereto, provide for cost savings in the printing and distribution of its reports and other authority publications.

Section 2806. Personnel reports by public authorities and public benefit corporations

Every public authority and public benefit corporation shall submit to the comptroller, the director of the budget and the chairpersons of the legislative fiscal committees, for their information, annually, on or before the fifteenth day of January of each calendar year, personnel information setting forth personal service schedules by subsidiary, division and unit which indicate position, grade, salary and title for each employee and in summary form

Title 2 Boards of Public Authorities

Section 2824. Role and responsibilities of board members

1. Board members of state and local authorities shall
 - (a) execute direct oversight of the authority's chief executive and other senior management in the effective and ethical management of the authority;
 - (b) understand, review and monitor the implementation of fundamental financial and management controls and operational decisions of the authority;
 - (c) establish policies regarding the payment of salary, compensation and reimbursements to, and establish rules for the time and attendance of, the chief executive and senior management;

(d) adopt a code of ethics applicable to each officer, director and employee that, at a minimum, includes the standards established in section seventy-four of the public officers law;

(e) establish written policies and procedures on personnel including policies protecting employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or board member of the authority, investments, travel, the acquisition of real property and the disposition of real and personal property and the procurement of goods and services; and

(f) adopt a defense and indemnification policy and disclose such plan to any and all prospective board members;

2. Individuals appointed to the board of a public authority shall participate in state approved training regarding their legal, fiduciary, financial and ethical responsibilities as directors of an authority within one year of appointment to a board. Board members shall participate in such continuing training as may be required to remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of public authorities and to adhere to the highest standards of responsible governance.

3. No board member, including the chairperson, shall serve as a public authority's chief executive officer, executive director, chief financial officer, comptroller, or hold any other equivalent position while also serving as a member of the board.

4. Board members of each state and local authority, or subsidiary thereof, shall establish an audit committee to be comprised of independent members. The committee shall recommend to the board the hiring of a certified independent accounting firm for such authority, establish the compensation to be paid to the accounting firm and provide direct oversight of the performance of the independent audit performed by the accounting firm hired for such purposes.

5. Notwithstanding any provision of any general, special or local law, municipal charter or ordinance to the contrary, no board of a state or local authority shall, directly or indirectly, including through any subsidiary, extend or maintain credit, arrange for the extension of credit, or renew an extension of credit, in the form of a personal loan to or for any officer, board member or employee (or equivalent thereof) of the authority.

6. To the extent practicable, members of the audit committee should be familiar with corporate financial and accounting practices.

7. Board members of each state and local authority, or subsidiary thereof, shall establish a governance committee to be comprised of independent members. It shall be the responsibility of the members of the governance committee to keep the board informed of current best governance practices; to review corporate governance trends; to update the authority's corporate governance principles; and to advise appointing authorities on the skills and experiences required of potential board members.

Section 2825. Membership on authorities and commissions; independence; and financial disclosure

Notwithstanding the provisions of any general, special or local law, municipal charter or ordinance:

1. No public officer or employee shall be ineligible for appointment as a trustee or member of the governing body of a state or local authority, as defined in section two of this chapter, and any public officer or employee may accept such appointment and serve as such trustee or member without forfeiture of any other public office or position of public employment by reason thereof.

2. Except for members who serve as members by virtue of holding a civil office of the state, the majority of the remaining members of the governing body of every state or local authority shall be independent members; provided, however, that this provision shall apply to appointments made on or after the effective date of the chapter of the laws of two thousand five which added this subdivision. The official or officials having the authority to appoint or remove such remaining members shall take such actions as may be necessary to satisfy this requirement. For the purposes of this section, an independent member is one who:

(a) is not, and in the past two years has not been, employed by the public authority or an affiliate in an executive capacity;

(b) is not, and in the past two years has not been, employed by an entity that received remuneration valued at more than fifteen thousand dollars for goods and services provided to the public authority or received any other form of financial assistance valued at more than fifteen thousand dollars from the public authority;

(c) is not a relative of an executive officer or employee in an executive position of the public authority or an affiliate; and

(d) is not, and in the past two years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the public authority or an affiliate.

3. Notwithstanding any other provision of any general, special or local law, municipal charter or ordinance to the contrary, board members, officers, and employees of a state authority shall file annual financial disclosure statements as required by section seventy-three-a of the public officers law. Board members, officers, and employees of a local public authority shall file annual financial disclosure statements with the county board of ethics for the county in which the local public authority has its primary office pursuant to article eighteen of the general municipal law.

Section 2826. Quorums and majorities

Notwithstanding any other provision of this chapter and notwithstanding any provision of any general, special or local law, whenever the whole number of the board of any authority or commission heretofore or hereafter continued or created by this chapter is three or more persons, a majority of the whole number of the members of such board, at a meeting duly held at a time fixed by law, or by any by-law duly adopted by such board, or at any duly adjourned meeting of such meeting or at any meeting duly held upon reasonable notice to all of the members of such board, shall constitute a quorum and not less than a majority of the whole number of such board may perform and exercise the powers authorized and provided in this chapter. For the purpose of this section the words "whole number" shall be construed to mean the total number which such board would have were there no vacancies and were none of the members of such board disqualified from acting.

Section 2827. Removal of authority members

Except as otherwise provided in this chapter, every member of every authority or commission heretofore or hereafter continued or created by this chapter, except ex-officio members, that is, members whose membership results by virtue of their incumbency of a public office, shall be removable by the public officer or public body which is empowered by this chapter to appoint such authority or commission member, for inefficiency, neglect of duty or misconduct in office, provided, however, that such member shall be given a copy of the charges against him and an opportunity of being heard in person, or by counsel, in his defense upon not less than ten days' notice.

Section 2828. Termination of public authorities

Every authority or commission hereafter created by this chapter shall terminate at the end of five years from the date of its creation if at the end of such period it has outstanding no liabilities; provided, however, that any appropriation made to such authority or commission by the state of New York or by any political subdivision thereof shall not be deemed a liability for the purposes of this section.

Title 3 Employees of Public Authorities

Section 2850. Transfer of authority officers and employees

Subject to the civil service law and rules, transfer may be allowed between positions in any authority or commission heretofore or hereafter continued or created by this chapter, which is subject to the jurisdiction of the state or a municipal civil service commission, and positions in the service of the state or a civil division thereof.

Section 2850-A. Emergency service volunteers; paid leave

Notwithstanding any other provisions of law to the contrary, public officers and employees of public authorities who are certified by the American Red Cross as disaster volunteers shall be granted leave from work with pay to participate in specialized disaster relief operations upon written request for such services by the American Red Cross and upon the approval of the chief executive of the public authority for which the public officer or employee serves. The public officer or employee shall be compensated at his or her regular rate of pay for those regular work hours during which the public officer or employee is absent from work while participating in authorized specialized disaster relief operations. Such leave shall be provided without loss of seniority, compensation, sick leave, vacation leave or other overtime compensation to which the volunteer is otherwise entitled and shall not exceed twenty days in any calendar year.

Section 2851. Age not to be bar to employment by public authorities

No public authority shall hereafter prohibit, prevent, disqualify or discriminate against any person applying for employment by, such authority, who is physically and mentally qualified, or from competing, participating or registering for a position, or be penalized in a final rating for any position, by reason of his or her age. Any existing rule, regulation, penalty or requirement resolution preventing the hiring of persons because of age shall be void, except that nothing herein contained, shall prevent any public authority from adopting reasonable minimum or maximum age requirements for positions such as policeman, fireman, guard or other positions which require extraordinary physical effort except where age limits for such positions are already prescribed by law. Notwithstanding any provisions to the contrary, no person who is physically or mentally qualified may be disqualified from, competing, participating or registering for a promotional examination or be penalized in a final rating or barred from promotion after having passed such promotion examination by reason of his or her age, by any public authority.

Title 3-A Business Practices of Public Authorities

Section 2855. Electronic method of payment; periodic charges

Notwithstanding the provisions of any law to the contrary, if any authority shall offer any electronic method of payment for tolls, fares, fees, rentals, or other charges, including but not limited to a system called E-ZPass, such authority shall not impose any periodic administrative or other charge for the privilege of using such electronic method of payment for such charges. Nothing in this section shall be construed to prohibit any authority from making any charge for extra services requested by a holder of such electronic method of payment, any charge for lost or damaged equipment, or for defaults, such as charges for dishonored checks. The authority shall not enter any agreement with bondholders that would require the imposition of administrative or other periodic charges relating to electronic methods of payment prohibited by this section.

Title 4 Contracts of Public Authorities

Section 2875. Ground for cancellation of contract by public authority

A clause shall be inserted in all specifications or contracts hereafter made or awarded by any public authority or by any official of any public authority created by the state or any political subdivision, for work or services performed or to be performed or goods sold or to be sold, to provide that upon the refusal by a person, when called before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract,

(a) such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof, for goods, work or services, for a period of five years after such refusal, and to provide also that

(b) any and all contracts made with any public authority or official thereof, since the effective date of this law, by such person and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the public authority without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the public authority for goods delivered or work done prior to the cancellation or termination shall be paid.

Section 2875-A. Definitions

As used in this article, the following terms shall have the following meanings unless otherwise specified:

1. "Construction item" means any such item or material used in construction and which is procured directly by the public authority or office or any such item or material commonly used in construction which is procured by a person, other than a municipality, under contract with the public authority or office.

2. "Office" means the office of general services.
3. "Practicable" means capable of being used without violating the following criteria: performance, availability at a reasonable price, availability within a reasonable period of time and maintenance of a satisfactory level of competition.
4. "Product" means any material, supply, equipment or construction item or other item whether real or personal property which is the subject of any purchase, barter, or other exchange made to procure such product.
5. "Secondary materials" means any material recovered from or otherwise destined for the waste stream, including but not limited to, post-consumer material, industrial scrap material, and overstock or obsolete inventories from distributors, wholesalers and other companies as defined in rules and regulations promulgated by the commissioner of general services but such term does not include those materials and byproducts generated from, and commonly reused within an original manufacturing process.
6. "Specification" means any description of the physical or functional characteristics, or of the nature of a material, supply, equipment or construction item. It may include a description of any requirement for inspecting, testing or preparing a material, supply, equipment or construction item for delivery.

Section 2875-B. Specifications

Within twelve months of the effective date of this section all public authorities or commissions created or continued by this chapter shall review their present product specifications to determine whether such require that products be manufactured from virgin materials or exclude products manufactured from secondary materials and shall, on or before April first, nineteen hundred ninety revise and adopt their product specifications as may be necessary to ensure that:

- a. Where such specifications exclude the use of products manufactured from secondary materials or require that products be manufactured from virgin materials only, such exclusions or requirements be eliminated; provided however, that specifications need not be revised if the public authority or commission demonstrates that for a particular end use a product containing secondary materials would not meet necessary performance standards.
- b. Performance standards, specifications and a product's intended end use are related, and clearly identified when feasible.
- c. Specifications are not overly stringent for a particular end use or performance standard.
- d. Specifications incorporate or require the use of secondary materials to the maximum extent practicable without jeopardizing the performance or intended end use of the product; provided however, where the public authority or commission demonstrates that for a particular end use a product containing secondary materials would not meet necessary performance standards, such specifications need not incorporate or require the use of secondary materials.

Section 2876. Disqualification to contract with public authority

Any person who, when called before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with a public department, agency or

official of the state or of any political subdivision thereof or of a public authority, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant questions concerning such transaction or contract, and any firm, partnership or corporation, of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or any official of any public authority created by the state or any political subdivision, for goods, work or services, for a period of five years after such refusal or until a disqualification shall be removed pursuant to the provisions of section twenty-eight hundred seventy-seven of this title. It shall be the duty of the officer conducting the investigation before the grand jury, the head of a state department, the chairman of the temporary state commission or other state agency, the organized crime task force in the department of law, the head of a city department or other city agency before which the refusal occurs to send notice of such refusal, together with the names of any firm, partnership or corporation of which the person so refusing is known to be a member, partner, officer or director, to the commissioner of transportation of the state of New York, or the commissioner of general services as the case may be, and the appropriate departments, agencies and officials of the state, political subdivisions thereof or public authorities with whom the persons so refusing and any firm, partnership or corporation of which he is a member, partner, director or officer, is known to have a contract. However, when such refusal occurs before a body other than a grand jury, notice of refusal shall not be sent for a period of ten days after such refusal occurs. Prior to the expiration of this ten day period, any person, firm, partnership or corporation which has become liable to the cancellation or termination of a contract or disqualification to contract on account of such refusal may commence a special proceeding at a special term of the supreme court, held within the judicial district in which the refusal occurred, for an order determining whether the questions in response to which the refusal occurred were relevant and material to the inquiry. Upon the commencement of such proceeding, the sending of such notice of refusal to answer shall be subject to order of the court in which the proceeding was brought in a manner and on such terms as the court may deem just. If a proceeding is not brought within ten days, notice of refusal shall thereupon be sent as provided herein.

Section 2877. Removal of disqualification of public contractors by petition

1. Any firm, partnership or corporation which has become subject to the cancellation or termination of a contract or disqualification to contract on account of the refusal of a member, partner, director or officer thereof to waive immunity when called to testify, as provided in sections twenty-eight hundred seventy-five and twenty-eight hundred seventy-six of this title, may, upon ten days' notice to the attorney general and to the officer who conducted the investigation before the grand jury or other body in which the refusal occurred, commence a special proceeding at a special term of the supreme court held within the judicial district in which the refusal occurred for a judgment discontinuing the disqualification. Such application shall be in the form of a petition setting forth grounds, including that the cooperation by petitioner with the grand jury or other body at the time of the refusal was such, and the amount and degree of control and financial interest, if any, in the petitioning firm, partnership or corporation by the member, partner, officer or director who refused to waive immunity is such that it will not be in the public interest to cancel or terminate petitioner's contracts or to continue the disqualification, as provided in sections twenty-eight hundred seventy-five and twenty-eight hundred seventy-six of this title. A copy of the petition and accompanying papers shall be served with the notices to be given pursuant to this subdivision.

2. Upon the filing of such petition the court may stay as to petitioner, pending a decision upon the petition, the cancellation or termination of any contracts resulting from such refusal upon such terms as to notice or otherwise as may be just.

3. At least two days prior to the return day, the officer who conducted the investigation before the grand jury or other body and the attorney general may file answers to the petition or apply for judgment dismissing the petition as a matter of law. On or before the return day the petitioner may file a reply to the answer.
4. Upon the return day the court may, upon the petition and answer and other papers filed, forthwith render such judgment as the case requires, or if a triable issue of fact is duly raised, it shall forthwith be tried before a court sitting without a jury or before a referee. The provisions of statute or rule governing references in an action shall apply to a reference under this subdivision.
5. The court shall render judgment dismissing the petition on the merits or discontinuing the disqualification upon the ground that the public interest would be served by its discontinuance, and granting such other relief as to the cancellation or termination of contracts as may be appropriate, but without costs to petitioner.

Section 2603-A. Letting of certain contracts involving steel products

1. Notwithstanding any other provision of law, all public authorities shall award contracts involving steel products as follows:
 - a. All purchase contracts for supplies, material or equipment involving an estimated expenditure in excess of fifty thousand dollars shall require with respect to materials, supplies and equipment made of, fabricated from, or containing steel components, that such steel components be produced or made in whole or substantial part in the United States, its territories or possessions. The provisions of this paragraph shall not apply to motor vehicles and automobile equipment assembled in Canada in conformity with the United States-Canadian trade agreements known as the "Automotive Products Trade Act of 1965" or any amendments thereto.
 - b. All contracts in excess of one hundred thousand dollars for the construction, reconstruction, alteration, repair, maintenance or improvement of public works shall require that all structural steel, reinforcing steel or other major steel items to be incorporated in the work of the contract shall be produced or made in whole or substantial part in the United States, its territories or possessions.
2. The provisions of this section shall not apply if the governing board or body of such public authority, in its discretion, determines that such provisions would result in unreasonable costs or that such steel products or steel components cannot be produced or made in the United States in sufficient and reasonably available quantities or of satisfactory quality or design.

* NB (Should be renumbered 2877-a)

Section 2878. Statement of non-collusion in bids or proposals to public authority

1. Every bid or proposal hereafter made to a public authority or to any official of any public authority created by the state or any political subdivision, where competitive bidding is required by statute, rule, regulation or local law, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury:

Non-collusive bidding certification.

"(a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition."

(b) A bid shall not be considered for award nor shall any award be made where (a) (1) (2) and (3) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (a) (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of subparagraph one (a).

2. Any bid hereafter made to any public authority or to any official of any public authority created by the state or any political subdivision, by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, regulation, or local law, and where such bid contains the certification referred to in subdivision one of this section, shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

Section 2878-A. Purchasing of products

1. All products purchased shall be recycled products, which meet contract specifications, unless the only available product does not contain recycled content, and provided that the cost of the recycled product does not exceed a cost premium of ten percent above the cost of a comparable product that is not a recycled product or, if at least fifty percent of the secondary materials utilized in the manufacture of that product are generated from the waste stream in New York state, the cost of the recycled product does not exceed a cost premium of fifteen percent above the cost of a comparable product that is not a recycled product. For the purpose of this section and until July first, nineteen hundred ninety-six, "recycled product" shall mean any product which has been manufactured from secondary materials, as defined in subdivision one of section two hundred sixty-one of the economic development law, and meets secondary material content requirements adopted by the office of general services under subdivision one of section one hundred seventy-seven of the state finance law for products available to the public authority under state contract or, if no such contract for such product is available to the public authority, any product which meets the secondary material content requirements adopted by the public authority with respect to a specific commodity procurement by the public authority. On and after July first, nineteen hundred ninety-six, "recycled product" shall mean, for the purposes of this section,

any product which has been manufactured from secondary materials, as defined in subdivision one of section two hundred sixty-one of the economic development law, and which meets the requirements of subdivision two of section 27-0717 of the environmental conservation law and regulations promulgated pursuant thereto.

2. Whenever a public authority, corporation or commission shall purchase or cause the purchase of printing on recycled paper, it shall require the printed material to contain the official state recycling emblem established pursuant to subdivision two of section 27-0717 of the environmental conservation law and regulations promulgated pursuant thereto if such paper has been approved by the department of environmental conservation as satisfying the requirements of such statute and regulations, or, if such paper has not been so approved, require the printed material to include a printed statement which indicates the percentages of pre-consumer and post-consumer recycled material content of such paper.

Section 2878-B. Source separation of wastes

1. No later than September first, nineteen hundred eighty-nine each public authority, corporation or commission shall devise and institute a program to source separate waste paper generated within its facilities. Such program shall include marketing arrangements and appropriate procedures to ensure the recovery of discarded paper in a noncontaminated condition. This program may be phased in, utilizing those office facilities most conducive to operation of a source separation program, but shall be fully implemented by July first, nineteen hundred ninety.

2. No later than July first, nineteen hundred ninety, each public authority, corporation or commission shall devise and institute a program to source separate all other waste generated within its facilities that is not covered by this section. Such program shall include marketing arrangements and appropriate procedures to ensure the recovery of waste for which the full avoided costs of proper collection, transportation and disposal of source separated materials are equal to or greater than the cost of collection, transportation and sale of said material less the amount received from the sale of said material. This program may be phased in, utilizing those office facilities most conducive to operation of a source separation program but shall be fully implemented by July first, nineteen hundred ninety-one.

3. A public authority, corporation or commission occupying facilities made available or provided by the office of general services may comply with the provisions of this section by participating in a program conducted by the office of general services pursuant to subdivisions four and five of section one hundred seventy-seven of the state finance law.

Section 2879. Procurement contracts

1. Every public authority and public benefit corporation, a majority of the members of which consist of persons either appointed by the governor or who serve as members by virtue of holding a civil office of the state, or a combination thereof, (such entities to be hereinafter in this section referred to as "corporation") shall adopt by resolution comprehensive guidelines which detail the corporation's operative policy and instructions regarding the use, awarding, monitoring and reporting of procurement contracts. Guidelines approved by the corporation shall be annually reviewed and approved by the corporation.

2. For purposes of this section, procurement contracts shall mean any written agreement for the acquisition of goods or services of any kind, in the actual or estimated amount of five thousand dollars or more.

3. The guidelines approved by the corporation shall include, but not be limited to the following:

(a) A description of the types of goods purchased, and for procurement contracts for services, a description of those areas of responsibility and oversight requiring the use of personal services and the reasons for the use of personal services in such areas.

(b) Requirements regarding the selection of contractors, which shall include provisions:

(i) for the selection of such contractors on a competitive basis, and provisions relating to the circumstances under which the board may by resolution waive competition;

(ii) describing when the award of procurement contracts shall require approval of the board by resolution, provided that any contract involving services to be rendered over a period in excess of one year shall require the approval of the board by resolution and an annual review of the contract by the board;

(iii) setting forth responsibilities of contractors;

(iv) as used in this subparagraph, the term "professional firm" shall be defined as any individual or sole proprietorship, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture, engineering or surveying.

The corporation shall not refuse to negotiate with a professional firm solely because the ratio of the "allowable indirect costs" to direct labor costs of the professional firm or the hourly labor rate in any labor category of the professional firm exceeds a limitation generally set by the corporation in the determination of the reasonableness of the estimated cost of services to be rendered by the professional firm, but rather the corporation should also consider the reasonableness of cost based on the total estimated cost of the service of the professional firm which should include, among other things, all the direct labor costs of the professional firm for such services plus all "allowable indirect costs," other direct costs, and negotiated profit of the professional firm. "Allowable indirect costs" of a professional firm are defined as those costs generally associated with overhead which cannot be specifically identified with a single project or contract and are considered reasonable and allowable under specific state contract or allowability limits.

(c) An identification of those areas or types of contracts for which minority or women-owned business enterprises may best bid so as to promote and assist participation by such enterprises and facilitate a fair share of the awarding of contracts to such enterprises. For the purposes of this section, a minority business enterprise means any business enterprise, including a sole proprietorship, partnership or corporation that is:

(i) at least fifty-one percent owned by one or more minority group members or in the case of a publicly-owned business at least fifty-one percent of the common stock or other voting interests of which is owned by one or more minority group members;

(ii) an enterprise in which the minority ownership is real, substantial and continuing;

(iii) an enterprise in which the minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and

(iv) an enterprise authorized to do business in New York state, independently owned and operated, and not dominant in its field.

(d) For the purposes of this section, a minority group member means a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:

(i) Black persons having origins in any of the Black African racial groups not of Hispanic origin;

(ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;

(iii) Asian and Pacific Islander persons having origins in any of the Far East, Southeast Asia, the Indian sub-continent or the Pacific Islands; or

(iv) Native American persons having origins in any of the original peoples of North America.

(e) For the purposes of this section, a women-owned business enterprise means a business enterprise, including a sole proprietorship, partnership or corporation which is:

(i) at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women or in the case of a publicly-owned business at least fifty-one percent of the common stock or other voting interests of which is owned by United States citizens or permanent resident aliens who are women;

(ii) an enterprise in which the ownership interest of women is real, substantial and continuing;

(iii) an enterprise in which the women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and

(iv) an enterprise authorized to do business in New York state, independently owned and operated, and not dominant in its field.

(f) A listing of the types of provisions to be contained in procurement contracts, including provisions concerning the nature and monitoring of the work to be performed, the use of corporate supplies and facilities, the use of corporate personnel and any other provisions.

(g) Provisions regarding procurement contracts which involve former officers or employees of the corporation.

(h) Procedures regarding procurement contracts which are exempt from the publication requirements of article four-C of the economic development law.

(i) Policies to promote the participation by New York state business enterprises and New York state residents in procurement contracts, including, but not limited to:

(i) providing for the corporation to collect and to consult the specifications of New York state business enterprises in developing specifications for any procurement contract for the purchase of goods where possible, practicable, feasible and consistent with open bidding, except for procurement contracts for which the corporation would be expending funds received from another state. The corporation shall, where feasible, make use of the stock item specification forms prepared by the commissioner of general services, and where necessary, consult with the commissioner of the office of general services, in developing such specifications and make such determinations; and

(ii) with the cooperation of the department of economic development and through cooperative efforts with contractors, providing for the notification of New York state business enterprises of opportunities to participate as subcontractors and suppliers on procurement contracts let by the corporation in an amount estimated to be equal to or greater than one million dollars and promulgating procedures which will assure compliance by contractors with such notification. Once awarded the contract such contractors shall document their efforts to encourage the participation of New York state business enterprises as suppliers and subcontractors on procurement contracts equal to or greater than one million dollars. Documented efforts by a successful contractor shall consist of and be limited to showing that such contractor has

- (a) solicited bids, in a timely and adequate manner, from New York state business enterprises including certified minority and women-owned business, or
- (b) contacted the New York state department of economic development to obtain listings of New York state business enterprises, or
- (c) placed notices for subcontractors and suppliers in newspapers, journals and other trade publications distributed in New York state, or
- (d) participated in bidder outreach conferences.

If the contractor determines that New York state business enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made. If the contractor does not intend to use subcontractors on the contract, the contractor shall provide a statement verifying such intent; and

(iii) except for procurement contracts for which the corporation would be expending funds received from another state, the corporation shall include in all bid documents provided to potential bidders a statement that information concerning the availability of New York state subcontractors and suppliers is available from the New York state department of economic development, which shall include the directory of certified minority and women-owned businesses, and it is the policy of New York state to encourage the use of New York state subcontractors and suppliers, and to promote the participation of minority and women-owned businesses where possible, in the procurement of goods and services; and

(iv) with the cooperation of the community services division of the department of labor and through cooperative efforts with contractors, providing for the notification of New York state residents of employment opportunities arising in New York state out of procurement contracts let by the corporation in an amount estimated to be equal to or greater than one million dollars; and promulgating procedures which will assure compliance by contractors with such notification by requiring contractors to submit post-award compliance reports documenting their efforts to provide such notification through listing any such positions with the community services division, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements; and

(v) including in each set of documents soliciting bids on procurement contracts to let by the corporation a statement notifying potential bidders located in foreign countries that the corporation may assign or otherwise transfer offset credits created by such procurement contract to third parties located in New York state; providing for the assignment or other form of transfer of offset credits created by such procurement contracts, directly or indirectly, to third parties located in New York state, in accordance with the written directions of the commissioner of economic development; and providing for the corporation to otherwise cooperate with the department of economic development in efforts to get foreign countries to recognize offset credits assigned or transferred to third parties located in New York state created by such procurement contracts; and

(vi) promulgating procedures which will assure compliance with the federal equal employment opportunity act of 1972 (P.L. 92-261), as amended, by contractors of the corporation.

(j) For the purposes of this section, a "New York state business enterprise" means a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods which are sought by the corporation and which are substantially

manufactured, produced or assembled in New York state, or services which are sought by the corporation and which are substantially performed within New York state.

(k) For the purposes of this section, a "New York resident" means a natural person who maintains a fixed, permanent and principal home located within New York state and to which such person, whenever temporarily located, always intends to return.

4. Each corporation shall have the power from time to time to amend such procurement contract guidelines in accordance with the provisions of this section.
5. (a) Each corporation shall notify the commissioner of economic development of the award of a procurement contract for the purchase of goods or services from a foreign business enterprise in an amount equal to or greater than one million dollars simultaneously with notifying the successful bidder therefor. No corporation shall thereafter enter into a procurement contract for said goods or services until at least fifteen days has elapsed, except for procurement contracts awarded on an emergency or critical basis, or where the commissioner of economic development waives the provisions of this sentence. The notification to the commissioner of economic development shall include the name, address and telephone and facsimile number of the foreign business enterprise, a brief description of the goods or services to be obtained pursuant to the proposed procurement contract, the amount of the proposed procurement contract, the term of the proposed procurement contract, and the name of the individual at the foreign business enterprise or acting on behalf of the same who is principally responsible for the proposed procurement contract. Such notification shall be used by the commissioner of economic development solely to provide notification to New York state business enterprises of opportunities to participate as subcontractors and suppliers on such procurement contracts, to promote and encourage the location and development of new business in the state, to assist New York state business enterprises in obtaining offset credits from foreign countries, and to otherwise investigate, study and undertake means of promoting and encouraging the prosperous development and protection of the legitimate interest and welfare of New York state business enterprises, industry and commerce.

(b) As used in this section, the following terms shall have the following meanings, unless a different meaning appears from the context:

(i) "Foreign business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale, lease or other form of exchange, goods which are sought by the corporation and which are substantially produced outside New York state, or services, other than construction services, sought by the corporation which are substantially performed outside New York state. For purposes of construction services, foreign business enterprise shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York state.

(ii) "New York state business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale or lease or other form of exchange, goods which are sought by the corporation and which are substantially manufactured, produced or assembled in New York state, or services, other than construction services, which are sought by the corporation and which are substantially performed within New York state. For purposes of construction services, a New York state business enterprise shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which has its principal place of business in New York state.

(iii) "Discriminatory jurisdiction" shall mean any other country, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of or otherwise discriminates against a New York state business enterprise in the procurement of goods and services by the same or a non-governmental entity influenced by the same. Such discrimination may include, but is not limited to, any law, regulation, procedure or practice, terms or license, authorization, or funding or bidding rights which requires or encourages any agency or instrumentality of the state or political subdivision thereof or non-governmental entity influenced by the same to discriminate against a New York state business enterprise.

(c) In including any additional business enterprises on invitations to bid for the procurement of goods or services, the chief executive officer of the corporation shall not include any foreign business enterprise which has its principal place of business located in a discriminatory jurisdiction contained on the list prepared by the commissioner of economic development pursuant to subdivision six of section one hundred sixty-five of the state finance law, except, however, business enterprises which are New York state business enterprises as defined by this section. The corporation may waive the application of the provisions of this section whenever the chief executive officer of the corporation determines in writing that it is in the best interests of the state to do so. The chief executive officer of the corporation shall deliver each such waiver to the commissioner of economic development.

(d) A corporation shall not enter into a contract with a foreign business enterprise which has its principal place of business located in a discriminatory jurisdiction contained on the list prepared by the commissioner of economic development pursuant to subdivision six of section one hundred sixty-five of the state finance law. The provisions of this section may be waived by the chief executive officer of the corporation if the chief executive officer of the corporation determines in writing that it is in the best interests of the state to do so. The chief executive officer of the corporation shall deliver each such waiver to the commissioner of economic development.

6. Each corporation, as part of the guidelines established pursuant to subdivision three of this section, shall establish policies regarding the preparation of publicly available reports on procurement contracts entered into by such corporation. Such policies shall provide, at the minimum, for the preparation of a report no less frequently than annually, summarizing procurement activity by such corporation for the period of the report, including a listing of all procurement contracts entered into, all contracts entered into with New York state business enterprises and the subject matter and value thereof, all contracts entered into with foreign business enterprises, and the subject matter and value thereof, the selection process used to select such contractors, all procurement contracts which were exempt from the publication requirements of article four-C of the economic development law, the basis for any such exemption and the status of existing procurement contracts.

7. Each corporation shall annually prepare and approve a report on procurement contracts which shall include the guidelines, as specified in subdivision three of this section, an explanation of the guidelines and any amendments thereto since the last annual report. Such report on procurement contracts may be a part of any other annual report that the corporation is required to make.

8. (a) Each corporation shall annually submit its report on procurement contracts to the division of the budget and copies thereof to the department of audit and control, the department of economic development, the senate finance committee and the assembly ways and means committee.

(b) Each corporation shall make available to the public copies of its report on procurement contracts upon reasonable request therefor.

9. Nothing contained in this section shall be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement made or entered into in violation of, or without compliance with, the provisions of this section.

Section 2880. Prompt payment

1. Definitions. As used in this section, the following terms shall have the following meanings unless the context shall indicate another or different meaning or intent:

(a) "Corporation" means every public authority and public benefit corporation a majority of the governing board members of which are either appointed by the governor or serve as members by virtue of their service as an officer of a state department, division, agency, board or bureau, or combination thereof.

(b) "Contract" means an enforceable agreement entered into between a corporation and a contractor.

(c) "Contractor" means any person, partnership, private corporation or association:

(i) selling materials, equipment, or supplies or leasing property or equipment to a corporation;

(ii) constructing, reconstructing, rehabilitating or repairing buildings, highways or other improvements for or on behalf of a corporation; or

(iii) rendering or providing services to a corporation pursuant to a contract.

(d) "Designated payment office" means the office designated by the corporation to which a proper invoice is to be submitted by a contractor.

(e) "Prompt payment" means payment of a debt due and owing by a corporation before interest accrues thereon pursuant to a statement adopted in accordance with this section.

(f) "Proper invoice" means a written request for a contract payment that is submitted by a contractor setting forth the description, price and quantity of goods, property, or services delivered or rendered, in such form and supported by such other substantiating documentation as the corporation may reasonably require.

(g) "Receipt of an invoice" means

(i) the date on which a proper invoice is actually received in the designated payment office, or

(ii) the date on which the corporation receives the purchased goods, property, or services covered by the proper invoice, whichever is later.

(h) "Set-off" means the reduction by the corporation of a payment due to a contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the contractor to the corporation.

(i) "Statement" means the rules and regulations adopted by a corporation pursuant to subdivision two of this section and any amendments thereto.

2. Statement adoption. Within one hundred twenty days after either the effective date of this section or the beginning of the existence of the respective corporation, whichever is later, each corporation shall promulgate rules and regulations detailing its prompt payment policy.

3. Statement contents.

(a) The statement shall include, but not be limited to, a reference to this section and the following for each type or category of contract as determined by the corporation:

(i) a description of the procedure to be followed by a contractor in requesting payment under a contract;

(ii) a schedule setting forth the time in which the corporation will make prompt payment under a contract;

(iii) a declaration that interest will be paid when prompt payment is not made and a statement of the rate at which such interest will accrue;

(iv) a list of the sources of funds available to the corporation to pay an interest penalty on each type or category of contract; and

(v) a list of facts and conditions which in the opinion of the corporation's governing body reasonably justify extension of the date by which contract payment must be made in order for the corporation not to become liable for interest payments in accordance with subdivision seven of this section.

(b) Such facts and conditions may include, but shall not be limited to, the following when:

(i) in accordance with specific statutory or contractual provisions, payment must be preceded by an inspection period or by an audit to determine the resources applied or used by a contractor in fulfilling the terms of the contract;

(ii) the necessary state government appropriation required to authorize payment has yet to be enacted;

(iii) a proper invoice must be examined by the federal government prior to payment; and

(iv) such date by which contract payment must be made is modified in accordance with subdivision eight of this section.

4. Statement amendment. Each corporation shall have the power to amend its statement by promulgating amended rules and regulations.

5. Statement filing. Each corporation shall, within thirty days after the statement's adoption, file a copy of such statement, and amendments thereto, with the state comptroller, the state director of the budget, the chairman of the senate finance committee, and the chairman of the assembly ways and means committee.

6. Contract incorporation. The statement in effect at the time of creation of a contract is hereby incorporated into and made a part of that contract.

7. Interest eligibility and computation.

(a) In order for the corporation not to be liable for the payment of interest, contract payment must be made within thirty calendar days, excluding legal holidays, after the receipt of an invoice for the amount of the contract payment due; except when the contract payment is of the type where the facts and conditions are as defined pursuant to subparagraph (v) of paragraph (a) of subdivision three of this section. Any time taken to satisfy or rectify any of the facts or conditions described in subdivision three (except for subparagraph (iv) of paragraph (b) of subdivision three) of this section shall extend the date by which contract payment must be made in order for the corporation not to become liable for interest payments by an equal period of time.

(b) A corporation, which must process payments through the state department of audit and control, the department of taxation and finance, or some other entity not under the corporation's control, shall not be liable for interest due to the process time taken by such entity.

(c) Notwithstanding any other provision of law to the contrary, interest shall be computed at the rate equal to the overpayment rate set by the commissioner of taxation and finance pursuant to subsection (e) of section one thousand ninety-six of the tax law.

(d) A corporation shall not be liable for payment of interest when such interest as computed pursuant to the provisions of paragraph (c) of this subdivision is less than ten dollars.

8. Each corporation shall have fifteen calendar days after receipt of an invoice by the corporation at its designated payment office to notify the contractor of

(a) defects in the delivered goods, property, or services,

(b) defects in the invoice, or

(c) suspected improprieties of any kind; and the existence of such defects or improprieties shall prevent the commencement of the time period specified in subdivision seven of this section.

When a corporation fails to notify a contractor of such defects or suspected improprieties within fifteen calendar days of receiving the invoice, the number of days allowed for payment of the corrected proper invoice will be reduced by the number of days between the fifteenth day and the day that notification was transmitted to the contractor. If the corporation, in such situations, fails to provide reasonable grounds for its contention that a defect or impropriety exists, the date by which contract payment must be made in order for the corporation not to become liable for interest payments shall be calculated from the date of receipt of an invoice.

9. Notwithstanding any provision of the public service law or any tariffs promulgated pursuant to that law to the contrary, the provisions of this section shall provide the sole basis for determining and making interest payments on invoices submitted by public utilities to corporations.

10. A proper invoice submitted by the contractor shall be required to initiate any payment, except where the contract provides that the contractor will be paid at predetermined intervals without having to submit an invoice for each such scheduled payment and, for the purposes of determining eligibility for payment of interest and subject to the exception and time-to-rectify provisions of subdivisions three and seven of this section, the date by which contract payment must be made in order for the corporation not to become liable for interest payments shall be the payment due date specified in accordance with the contract.

11. Annual report.

(a) Each corporation shall annually prepare a report on the scope and implementation of its prompt payment policy which shall include, but not be limited to:

(i) A listing of the types or categories of contracts which the corporation entered into during the twelve month period covered by the report, together with a brief indication of whether each such type or category of contract was subject to the prompt payment requirements promulgated by the corporation and, if not, why not;

(ii) The number and amounts of interest payments made for contracts arranged according to each such type or category;

(iii) The number of interest chargeable days and the total number of days taken to process each late contract payment; and

(iv) A summary of the principal reasons that such late payments occurred.

(b) Within ninety days after the completion of its fiscal year, each corporation shall file copies of the report required by paragraph (a) of this subdivision with the state comptroller, the state director of the budget, the chairman of the senate finance committee, and the chairman of the assembly ways and means committee.

12. Public access.

(a) Each corporation shall make available to the public, upon a reasonable request therefor, copies of its statement and annual report.

(b) Each contractor doing business with a corporation shall be given a copy of that corporation's statement.

13. Inapplicability of section. The provisions of this section shall not apply to payments due and owing by a corporation:

(a) under the eminent domain procedure law;

(b) as interest allowed on judgments rendered by a court pursuant to any provision of law other than those contained in this section;

(c) to the federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government including, but not limited to, counties, cities, towns, villages, school districts, special districts, or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;

(d) in situations where the corporation exercises a legally authorized set-off against all or part of the payment due the contractor.

14. The provisions of this section shall not apply to the facilities development corporation or the state university construction fund.

15. Judicial review. Any determination made by a corporation pursuant to this section which prevents the commencement of the time in which interest will be paid shall be subject to judicial review in a proceeding pursuant to article seventy-eight of the civil practice law and rules. Such proceedings shall only be commenced in the absence, or upon completion, of other review procedures specified in the contract or by regulation.

16. Court action or other legal processes.

(a) Notwithstanding any other provisions of law to the contrary, the liability of a corporation, insofar as incurring an obligation to make an interest payment to a contractor pursuant to the terms of this section is concerned, shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.

(b) With respect to the court action or other legal processes referred to in paragraph (a) of this subdivision, any interest obligation incurred by a corporation after the date specified therein pursuant to any provision of law other than this section shall be determined as prescribed by such separate provision of law, shall be paid as directed by the court, and shall be paid from any source of funds available for that purpose.

Section 2880-A. Contracts for the financing of local water supply systems

Notwithstanding any other provisions of this title or the provisions of any general, special or local law, any public benefit corporation created pursuant to article five of this chapter which is authorized by law to produce, develop, distribute and sell water, water services, facilities and commodities shall have the power:

1. to enter into contracts, with any entity specified in subdivision two of this section, providing for the financing of the acquisition and construction of improvements to the water supply system or water distribution system of such entity, the terms of which may include, among other provisions, provisions requiring such entity to purchase water only from such public benefit corporation during the term of such contract, which term shall be limited to the lesser of (a) thirty years or (b) the probable useful life of the items for which any bonds are issued by such public benefit corporation to finance the acquisition and construction of improvements to such water supply system or water distribution system, and
2. to issue bonds, in accordance with the applicable provisions of this chapter, to finance the acquisition and construction of improvements to any water supply system or water distribution system owned by any water authority, municipality, county, town, village, water district or Indian tribe to which such public benefit corporation is authorized by law to furnish water.

Title 5 Funds and Accounts of Public Authorities

Section 2890. Funds and accounts of public authorities

Notwithstanding any inconsistent provision of this chapter or any other general, special or local law, every authority or commission hereafter created by this chapter is hereby empowered to establish such funds and accounts as it may deem necessary subject to such agreements as such authority or commission shall conclude with the holders of its bonds or notes.

Title 5-A Disposition of Property by Public Authorities

Section 2895. Definitions

For the purposes of this title, unless a different meaning is required by the context:

1. "Contracting officer" shall mean the officer or employee of a public authority who shall be appointed by resolution of the board of the public authority to be responsible for the disposition of property.
2. "Dispose" or "disposal" shall mean transfer of title or any other beneficial interest in personal or real property in accordance with section twenty-eight hundred ninety-seven of this title.
3. "Property" shall mean personal property in excess of five thousand dollars in value, real property, and any inchoate or other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party.

Section 2896. Duties of public authorities with respect to the disposal of property

1. Every authority, as defined in section two of this chapter, shall adopt by resolution comprehensive guidelines which shall
 - (a) detail the public authority's operative policy and instructions regarding the use, awarding, monitoring and reporting of contracts for the disposal of property, and

(b) designate a contracting officer who shall be responsible for the public authority's compliance with, and enforcement of, such guidelines.

Such guidelines shall be consistent with, and shall require the public authority's contracting activities to comply with this section, the authorities enabling legislation and any other applicable law for the disposal of property, except that such guidelines may be stricter than the provisions of this section, the authorities enabling legislation and any other applicable law for the disposal of property if the public authority determines that additional safeguards are necessary to assure the integrity of its disposition activities. Guidelines approved by the public authority shall be annually reviewed and approved by the governing body of the public authority. On or before the thirty-first day of March in each year, the public authority shall file with the comptroller a copy of the guidelines most recently reviewed and approved by the public authority, including the name of the public authority's designated contracting officer. At the time of filing such guidelines with the comptroller, every public authority shall also post such guidelines on the public authority's internet website. Guidelines posted on the public authority's internet website shall be maintained on such website at least until the procurement guidelines for the following year are posted on such website.

2. Each public authority shall:

- a. maintain adequate inventory controls and accountability systems for all property under its control;
- b. periodically inventory such property to determine which property shall be disposed of;
- c. produce a written report of such property in accordance with subdivision three of this section;
- d. transfer or dispose of such property as promptly as possible in accordance with section twenty-eight hundred ninety-seven of this title.

3. a. Each public authority shall publish, not less frequently than annually, a report listing all real property of the public authority. Such report shall consist of a list and full description of all real and personal property disposed of during such period. The report shall contain the price received by the public authority and the name of the purchaser for all such property sold by the public authority during such period.

b. The public authority shall deliver copies of such report to the comptroller, the director of the budget, the commissioner of general services, and the legislature.

Section 2897. Disposal of public authority property

1. Supervision and direction. Except as otherwise provided in this section, the contracting officer designated by each public authority shall have supervision and direction over the disposition of property of such public authority.

2. Custody and control. The custody and control of the property of a public authority, pending its disposition, and the disposal of such property, shall be performed by the public authority in possession thereof or by the commissioner of general services when so authorized under this section.

3. Method of disposition. Subject to section twenty-eight hundred ninety-six of this title, any public authority may dispose of property for not less than the fair market value of such property by sale, exchange, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the contracting officer deems proper, and it may execute such documents for the transfer of title or other interest in property and take such other action as it deems necessary or proper to dispose of such property under the provisions of this section. Provided, however, that no

disposition of real property, any interest in real property, or any other property which because of its unique nature is not subject to fair market pricing shall be made unless an appraisal of the value of such property has been made by an independent appraiser and included in the record of the transaction.

4. Sales by the commissioner of general services. When it shall be deemed advantageous to the state, any public authority may enter into an agreement with the commissioner of general services where under such commissioner may dispose of property of such public authority under terms and conditions agreed to by the public authority and the commissioner of general services. In disposing of any such property of a public authority, the commissioner of general services shall be bound by the terms of this title and references to the contracting officer shall be deemed to refer to such commissioner.

5. Validity of deed, bill of sale, lease, or other instrument. A deed, bill of sale, lease, or other instrument executed by or on behalf of any public authority, purporting to transfer title or any other interest in property of a public authority under this title shall be conclusive evidence of compliance with the provisions of this title insofar as concerns title or other interest of any bona fide grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to the closing.

6. Bids for disposal; advertising; procedure; disposal by negotiation; explanatory statement.

a. All disposals or contracts for disposal of property of a public authority made or authorized by the contracting officer shall be made after publicly advertising for bids except as provided in paragraph c of this subdivision.

b. Whenever public advertising for bids is required under paragraph a of this subdivision:

(i) the advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property;

(ii) all bids shall be publicly disclosed at the time and place stated in the advertisement; and

(iii) the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the state, price and other factors considered; provided, that all bids may be rejected when it is in the public interest to do so.

c. Disposals and contracts for disposal of property may be negotiated or made by public auction without regard to paragraphs a and b of this subdivision but subject to obtaining such competition as is feasible under the circumstances, if:

(i) the personal property involved is of a nature and quantity which, if disposed of under paragraphs a and b of this subdivision, would adversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;

(ii) the fair market value of the property does not exceed fifteen thousand dollars;

(iii) bid prices after advertising therefor are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition;

(iv) the disposal will be to the state or any political subdivision, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;

(v) the disposal is for an amount less than the estimated fair market value of the property, the terms of such disposal are obtained by public auction or negotiation, the disposal of the

property is intended to further the public health, safety or welfare or an economic development interest of the state or a political subdivision (to include but not limited to, the prevention or remediation of a substantial threat to public health or safety, the creation or retention of a substantial number of job opportunities, or the creation or retention of a substantial source of revenues, or where the authority's enabling legislation permits), the purpose and the terms of such disposal are documented in writing and approved by resolution of the board of the public authority; or

(vi) such action is otherwise authorized by law.

- d. (i) An explanatory statement shall be prepared of the circumstances of each disposal by negotiation of:
- (A) any personal property which has an estimated fair market value in excess of fifteen thousand dollars;
 - (B) any real property that has an estimated fair market value in excess of one hundred thousand dollars, except that any real property disposed of by lease or exchange shall only be subject to clauses (C) through (E) of this subparagraph;
 - (C) any real property disposed of by lease for a term of five years or less, if the estimated fair annual rent is in excess of one hundred thousand dollars for any of such years;
 - (D) any real property disposed of by lease for a term of more than five years, if the total estimated rent over the term of the lease is in excess of one hundred thousand dollars; or
 - (E) any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.
- (ii) Each such statement shall be transmitted to the persons entitled to receive copies of the report required under section twenty-eight hundred ninety-six of this title not less than ninety days in advance of such disposal, and a copy thereof shall be preserved in the files of the public authority making such disposal.

Title 6 Eminent Domain Taking; Property of Public Corporation

Section 2900. Compensation; eminent domain taking

When property of a public benefit corporation is taken in the exercise of the power of eminent domain for a purpose substantially different from that for which it is held by such public benefit corporation, just compensation to the public benefit corporation shall be made in the same manner, to the same extent and subject to the same limitations as though it were private property.

Title 7 Investments of Public Authorities

Section 2925. Investments of funds by public authorities and public benefit corporations; general provisions

1. Every public authority and every public benefit corporation whether or not such corporation is otherwise governed by this chapter, (such entities to be hereinafter in this title referred to as "corporation") shall by resolution adopt comprehensive investment guidelines which detail the corporation's operative policy and instructions to officers and staff regarding the investing, monitoring

and reporting of funds of the corporation. The investment guidelines approved by the corporation shall be annually reviewed and approved by the corporation.

2. Funds of the corporation, for purposes of this title, shall consist of all moneys and other financial resources available for investment by the corporation on its own behalf or on behalf of any other entity or individual.

3. The investment guidelines approved by the corporation shall include, but not be limited to the following:

(a) A detailed list of the permitted investments of the corporation, which shall be consistent with the appropriate provisions of law relating to the corporation and any additional requirements pursuant to any contract with bondholders and noteholders.

(b) Procedures and provisions to fully secure the corporation's financial interest in investments; provided that the guidelines may include a description of the circumstances under which the corporation's financial interest in investments may be less than fully secured.

(c) A requirement that the corporation shall enter into written contracts pursuant to which investments are made, unless the corporation shall by resolution determine that a written contract is not practical or that there is not a regular business practice of written contracts with respect to a specific investment or transaction, in which case the corporation shall adopt procedures covering such investment or transaction. Such contracts and procedures shall include provisions:

(i) deemed necessary and sufficient to secure in a satisfactory manner the corporation's financial interest in each investment;

(ii) covering the use, type and amount of collateral or insurance for each investment;

(iii) establishing a method for valuation of collateral, and procedures for monitoring the valuation of such collateral on a regular basis;

(iv) for the monitoring, control, deposit and retention of investments and collateral which shall include, in the case of a repurchase agreement, a requirement that the obligations purchased be physically delivered for retention to the corporation or its agent (which shall not be an agent of the party with whom the corporation enters into such repurchase agreement), unless such obligations are issued in book-entry form, in which case the corporation shall take such other action as may be necessary to obtain title to or a perfected security interest in such obligations.

(d) Standards for the diversification of investments, including diversification with respect to types of investments and firms with which the corporation transacts business.

(e) Standards for the qualification of investment bankers, brokers, agents, dealers and other investment advisers and agents which transact business with the corporation, such as criteria covering quality, reliability, experience, capitalization, size and any other factors that, in the judgment of the corporation, make a firm qualified to transact business with the corporation.

(f) Provisions for reporting on the investments of the corporation, including provisions for an annual independent audit of all investments, the results of which shall be available to the board at the time the annual review and approval of investment guidelines is conducted by the corporation.

4. Each corporation shall have the power from time to time to amend such investment guidelines in accordance with the provisions of this title.

5. Each corporation shall direct the preparation and filing with the board of quarterly reports, or reports covering such other period as may be approved by the corporation, from a designated officer or

employee regarding any new investments, the inventory of existing investments, and the selection of investment bankers, brokers, agents, dealers or auditors.

6. Each corporation shall annually prepare and approve an investment report which shall include the investment guidelines, as specified in subdivision three of this section, amendments to such guidelines since the last investment report, an explanation of the investment guidelines and amendments, the results of the annual independent audit, the investment income record of the corporation and a list of the total fees, commissions or other charges paid to each investment banker, broker, agent, dealer and adviser rendering investment associated services to the corporation since the last investment report. Such investment report may be a part of any other annual report that the corporation is required to make.

7. (a) Each corporation, a majority of the members of which consist of persons appointed by the governor or who serve as members by virtue of holding a civil office of the state, or a combination thereof, shall annually submit its investment report to the division of the budget and copies thereof to the department of audit and control, the senate finance committee and the assembly ways and means committee.

(b) Each corporation, other than a corporation included under paragraph (a) of this subdivision, shall annually submit its investment report to the chief executive officer and chief fiscal officer of each municipality for the benefit of which it was created and to the department of audit and control.

(c) Each corporation shall make available to the public copies of its investment report upon reasonable request therefor.

8. Nothing contained in this section shall be deemed to alter, affect the validity of, modify the terms of or impair any contract, agreement or investment of funds made or entered into in violation of, or without compliance with, the provisions of this title.

Section 2926. Interest rate exchange or similar agreements for court facilities and combined occupancy structures and health facilities

1. In connection with the issuance of bonds, notes, or other obligations, or in connection with such bonds, notes, or other obligations already outstanding, for court facilities and combined occupancy structures pursuant to section sixteen hundred eighty-b of this chapter, and health facilities pursuant to paragraph (b) of subdivision one of section eight of section one of chapter three hundred ninety-two of the laws of nineteen hundred seventy-three, the dormitory authority shall have the power to:

(a) enter into interest rate exchange or similar agreements with any person under such terms and conditions as the dormitory authority may determine, including provisions as to default or early termination and indemnification by the dormitory authority or any other party thereto for loss of benefits as a result thereof; and

(b) procure insurance, letters of credit or other credit enhancement with respect to agreements described in paragraph (a) of this subdivision; and

(c) provide security for the payment or performance of its obligations with respect to agreements described in paragraph (a) of this subdivision from such sources and with the same effect as authorized by applicable law with respect to security for its bonds, notes or other obligations; and

(d) modify, amend, replace, or enter into new agreements, for the purpose of reducing or eliminating a situation of risk or exposure under an existing agreement, including, but not limited to a counterparty downgrade, default, or other potential economic loss.

2. Any interest rate exchange or similar agreement entered into pursuant to subdivision one of this section shall be subject to the following limitations:

(a) any such agreement shall be in the form of a written contract with a counterparty to provide for an exchange of payments based upon interest rates, and shall be for exchanges in currency of the United States of America only; and

(b) the counterparty thereto shall have credit ratings from at least two nationally recognized statistical rating agencies that are within the three highest investment grade categories, or the payment obligations of the counterparty shall be unconditionally guaranteed by an entity with such credit ratings; and

(c) the written contract shall require that, should the rating of the counterparty, if its payment obligations are not unconditionally guaranteed by another entity, or should the rating of the entity unconditionally guaranteeing the payment obligations of the counterparty, if so secured, fall below the rating required by paragraph (b) of this subdivision, that the obligations of such counterparty shall be fully and continuously collateralized by direct obligations of, or obligations the principal and interest on which are guaranteed by, the United States of America, with a net market value of at least one hundred two percent of the net market value of the contract to the dormitory authority, and such collateral shall be deposited with the dormitory authority or an agent thereof; and

(d) the total notional amount of such interest rate exchange or similar agreements entered into by the dormitory authority shall not exceed an amount equal to twenty per centum of the total amount of bonds, notes or other obligations outstanding or to be issued on behalf of a participating municipality pursuant to section sixteen hundred eighty-b of this chapter; provided, however, that such total notional amount shall not include the notional amount of interest rate exchange or similar agreements entered into for the purpose of reducing or eliminating a situation of risk or exposure under an existing agreement, including, but not limited to a counterparty downgrade, default, or other potential economic loss; and

(e) the total notional amount of such interest rate exchange or similar agreements entered into by the dormitory authority shall not exceed an amount equal to twenty per centum of the total amount of bonds, notes or other obligations outstanding or to be issued on behalf of a participating municipality pursuant to paragraph (b) of subdivision one of section eight of section one of chapter three hundred ninety-two of the laws of nineteen hundred seventy-three; provided, however, that such total notional amount shall not include the notional amount of interest rate exchange or similar agreements entered into for the purpose of reducing or eliminating a situation of risk or exposure under an existing agreement, including, but not limited to a counterparty downgrade, default, or other potential economic loss.

3. (a) Prior to authorizing the approval of any contract for interest rate exchange or similar agreement pursuant to subdivision one of this section, the board of the dormitory authority shall adopt written guidelines addressing the following:

(i) the conditions under which such contracts can be entered into;

(ii) the methods by which such contracts are to be solicited and procured;

(iii) the form and content such contracts shall take;

(iv) the aspects of risk exposure associated with such contracts;

(v) standards and procedures for counterparty selection;

- (vi) the procurement of credit enhancement, liquidity facilities, or the setting aside of reserves in connection with such contracts;
- (vii) collateralization or other requirements for securing the financial interest in such contracts;
- (viii) the methods to be used to reflect such contracts in the dormitory authority's financial statements;
- (ix) financial monitoring and periodic assessment of such contracts by the dormitory authority; and
- (x) such other matters relating thereto as the board of the dormitory authority shall deem necessary and proper.

(b) The dormitory authority shall issue a report to the director of the budget, the chairpersons of the senate finance committee and the assembly ways and means committee, and the state comptroller, on or before March first in any state fiscal year in which it enters into or continues to be a party to a contract for interest rate exchange or similar agreement. Such report shall list all such contracts entered into pursuant to this section, and shall include, but not be limited to, the following information for each such contract, as applicable:

- (i) a description of the contract, including a summary of the terms and conditions thereof and the method of procurement;
- (ii) any amounts which were required to be paid and received, and any amounts which actually were paid and received thereunder;
- (iii) any credit enhancement, liquidity facility or reserves associated therewith including an accounting of all costs and expenses incurred, whether or not in conjunction with the procurement of credit enhancement or liquidity facilities;
- (iv) a description of each counterparty;
- (v) an assessment of the counterparty risk, termination risk, and other risks associated therewith.

4. The dormitory authority shall not enter into any interest rate exchange or similar agreement pursuant to this section unless the lease, sublease, or other agreement between the participating municipality and the dormitory authority:

- (a) expressly authorizes the dormitory authority to enter into such agreements with respect to bonds, notes or other obligations outstanding or to be issued in connection with court facilities and combined occupancy structures or health facilities for that participating municipality; and
- (b) further obligates the participating municipality to pay to the dormitory authority any and all amounts payable by the authority under, or as a result of, such interest rate exchange or similar agreement.

Title 8 Internal Control Responsibilities of Public Authorities

Section 2930. Definitions

For the purposes of this title, the following terms shall have the following meanings:

1. "Internal control". A process that integrates the activities, plans, attitudes, policies, systems, resources and efforts of the people of an organization working together, and that is designed to provide

reasonable assurance that the organization will achieve its objectives and mission. The objectives of an internal control system include, but are not limited to: the safeguarding of assets; checking the accuracy and reliability of accounting data and financial reporting; promoting the effectiveness and efficiency of operations; ensuring compliance with applicable laws and regulations; and encouraging adherence to prescribed managerial policies. Internal control review processes are used periodically to evaluate the ongoing internal control system and to assess and monitor the implementation of necessary corrective actions.

2. "Internal audit". An appraisal activity established by the management of an organization for the review of operations as a means of assuring conformity with management policies and the effectiveness of internal control, and conducted in conformance with generally accepted standards for internal auditing.

3. "Covered authority". Any public authority or public benefit corporation, other than a bi-state authority or public benefit corporation, a majority of whose members are appointed by the governor or serve as members by virtue of holding state offices to which they were appointed by the governor, or any combination thereof.

Section 2931. Internal control responsibilities

The governing board of each covered authority shall:

1. establish and maintain for the authority guidelines for a system of internal control that are in accordance with this article and internal control standards;
2. establish and maintain for the authority a system of internal control and a program of internal control review. The program of internal review shall be designed to identify internal control weaknesses, identify actions that are needed to correct these weaknesses, monitor the implementation of necessary corrective actions and periodically assess the adequacy of the authority's ongoing internal controls;
3. make available to each member, officer and employee a clear and concise statement of the generally applicable managerial policies and standards with which he or she is expected to comply. Such statement shall emphasize the importance of effective internal control to the authority and the responsibility of each member, officer and employee for effective internal control;
4. designate an internal control officer, who shall report to the head of the authority, to implement and review the internal control responsibilities established pursuant to this section; and
5. implement education and training efforts to ensure that members, officers and employees have achieved adequate awareness and understanding of internal control standards and, as appropriate, evaluation techniques.

Section 2932. Internal audit responsibilities

1. The governing board of each covered authority or its designee shall determine, and periodically review the determination of, whether an internal audit function within the covered authority is required. Establishment of such function shall be based upon an evaluation of exposure to risk, costs and benefits of implementation, and any other factors that are determined to be relevant. In the event it is determined that an internal audit function is required, the governing board of each covered authority shall establish an internal audit function which operates in accordance with generally accepted professional standards for internal auditing. Any such internal audit function shall be directed by an internal audit director who shall report directly to the governing board of the authority. Internal audit

director appointments shall be based on appropriate internal auditing credentials of the proposed appointee, consistent with generally accepted standards for internal auditing, including internal auditing education and experience. The internal audit function shall evaluate the authority's internal controls and operations, identify internal control weaknesses that have not been corrected and make recommendations to correct these weaknesses.

2. In the event the governing board does not establish an internal audit function pursuant to subdivision one of this section it shall nevertheless establish and maintain the program of internal control review required by section twenty-nine hundred thirty-one of this title.

Title 9 Interest Rates on Public Authority Bonds and Notes

Section 2960. Interest rates

Notwithstanding any other provisions of this chapter or the provisions of any other general, special or local law, any public authority may agree or contract to pay interest on its certificates, notes or bonds, including those now outstanding, at such rate or rates, without limit, as may be necessary for an authority to sell such notes or bonds.

Title 10 State Government Cost Recovery System

Section 2975. Recovery of state governmental costs from public authorities and public benefit corporations

1. Notwithstanding any other provision of law to the contrary, every public authority and every public benefit corporation created by or pursuant to New York state law at least three of whose members are appointed by the governor, whether such authority or corporation is otherwise governed by this chapter (such entities, as so constituted, to be hereafter in this title referred to as "public benefit corporations"), shall reimburse to New York state an allocable share of state governmental costs attributable to the provision of services to public benefit corporations, as determined herein. The payment of such costs by public benefit corporations is a valid and proper purpose for which available authority funds may be applied.

2. (a) Annually the director of the division of the budget of the state of New York (such person to be hereafter in this title referred to as the "director of the budget"), in consultation with the state comptroller, shall determine the total amount of expenses incurred or to be incurred during the state's fiscal year in connection with the provision of central governmental services to public benefit corporations. Such expenses, in addition to the direct costs of personal service, shall include indirect costs of employee benefits, maintenance and operation, state equipment and facilities, rental for space occupied in state leased facilities or the fair market rental value of space occupied in state owned facilities, and contractual services, all as attributable to the provision of otherwise unreimbursed services to public benefit corporations by the New York state department of audit and control, department of law, executive chamber, division of the budget, the legislature, and such agencies, boards or commissions as the director of the budget determines provide such services to public benefit corporations.

(b) On or before November first, two thousand three and on or before November first of each year thereafter, the director of the budget shall determine the amount owed under this section by each public benefit corporation. The director of the budget may reduce, in whole or part, the amount of such assessment if the payment thereof would necessitate a state appropriation for the purpose, or

would otherwise impose an extraordinary hardship upon the affected public benefit corporation. The aggregate amount assessed under this section in any given state fiscal year may not exceed fifty-five million dollars.

3. The state treasurer shall impose and collect such assessments, which shall be paid no later than March thirty-first following the imposition of the assessments, and pay the same into the state treasury to the credit of the general fund.
4. The provisions of subdivisions two and three of this section shall not apply to any public benefit corporation which enters into a contract or agreement with the director of the budget which otherwise provides for cost recovery to the state and includes a provision that, in accordance with this subdivision, subdivisions two and three of this section shall not apply to such public benefit corporation. The circumstances for the entry into such contract or agreement may include, but shall not be limited to, the following:
 - (a) where such contract or agreement is for an amount which equals or exceeds the amount of the assessment provided by subdivision two of this section; or
 - (b) where the payment of all or a portion of the assessment provided by subdivision two of this section would necessitate, in the judgment of the director of the budget, an appropriation therefor by the state.
5. On or before June first, nineteen hundred ninety, and annually on or before June first, the director of the budget shall report to the respective chairpersons of the assembly ways and means committee and senate finance committee the amount of cost recovery obtained pursuant to this title and all contracts and agreements entered into pursuant to subdivision four of this section for the state fiscal year ending on the preceding March thirty-first.

Section 2975-A. Recovery of state governmental costs from industrial development agencies

1. Notwithstanding any other provision of law to the contrary, industrial development agencies or authorities created pursuant to title one of article eighteen-A of the general municipal law or any other provision of law shall reimburse to New York state an allocable share of state governmental costs attributable to the provision of services to industrial development agencies, as determined herein. The payment of such costs by industrial development agencies or authorities is a valid and proper purpose for which available agency or authority funds may be applied.
2. On November first of each year, the director of the budget shall determine the amount owed under this section by each industrial development agency or authority. The aggregate amount assessed under this section in any given state fiscal year may not exceed five million dollars.
3. The state treasurer shall impose and collect such assessments, which shall be paid no later than March thirty-first following the imposition of the assessments, and pay the same into the state treasury to the credit of the general fund.
4. On or before June first, two thousand nine, and annually on or before June first, the director of the budget shall report to the respective chairpersons of the assembly ways and means committee and senate finance committee the amount of cost recovery obtained pursuant to this title for the state fiscal year ending on the preceding March thirty-first.

Section 2976. Cost recovery on the issuance of certain bonds

1. Notwithstanding any other law to the contrary, public benefit corporations (which for purposes of this section shall include industrial development agencies created pursuant to title one of article eighteen-A of the general municipal law or any other provision of law) which issue bonds, notes or other obligations shall pay to the state a bond issuance charge upon the issuance of such bonds in an amount determined pursuant to subdivision two of this section. Such charge shall be paid to the state department of taxation and finance, upon forms prescribed therefor, no later than fifteen days from the end of the month within which such bonds are issued.

2. The bond issuance charge shall be computed by multiplying the principal amount of bonds issued by the percentage set forth in the schedule below, provided that:

(a) the charge applicable to the principal amount of single family mortgage revenue bonds shall be seven one-hundredths of one percent;

(b) the issuance of bonds shall not include the remarketing of bonds; and

(c) the issuance of bonds shall not include the current refunding of short term bonds, notes or other obligations for which the bond issuance charge provided by this section has been paid, provided that such current refunding

(i) occurs within one year from the issuance of the refunded obligations, or

(ii) is part of a program created by a single indenture or bond resolution that provides for the periodic issuance and refunding of short term obligations.

SCHEDULE

| <u>Principal Amount of Bonds Issued</u> | <u>Percentage Charge</u> |
|--|---------------------------------|
| a. \$1,000,000 or less | .168% |
| b. \$1,000,001 to \$5,000,000 | .336% |
| c. \$5,000,001 to \$10,000,000 | .504% |
| d. \$10,000,001 to \$20,000,000 | .672% |
| e. More than \$20,000,000 | .84% |

3. The provisions of subdivisions one and two of this section shall not apply to any public benefit corporation which enters into a contract or agreement with the director of the budget which otherwise provides for cost recovery to the state under this section and includes a provision that, in accordance with this subdivision, subdivisions one and two of this section shall not apply to such public benefit corporation. The circumstances for the entry into such contract or agreement may include, but shall not be limited to, those where the amount to be paid thereunder equals or exceeds the amount of the bond issuance charge which would otherwise be applicable pursuant to subdivisions one and two of this section.

Section 2976-A. Fees in connection with certain health care facility financings

1. In connection with the issuance of bonds, notes, or other obligations issued by public benefit corporations (which for purposes of this section shall include industrial development agencies created pursuant to title one of article eighteen-A of the general municipal law or any other provision of law) to finance the cost of a project approved by the commissioner of health for which reimbursement is provided pursuant to article twenty-eight of the public health law, the commissioner of health shall

charge a fee of nine tenths of one percent of the original principal amount of the bonds or other obligations issued for such purpose. Such fee shall be payable by the entity that owns or operates the facility to the state department of health upon the closing of such bonds or obligations.

2. In connection with the issuance of bonds, notes, or other obligations issued by a public benefit corporation to refund or refinance bonds or other obligations issued to finance the cost of a project approved by the commissioner of health for which reimbursement is provided pursuant to article twenty-eight of the public health law, the commissioner of health shall charge a fee of five tenths of one percent of the original principal amount of the bonds or other obligations issued for such purpose. Such fee shall be payable by the entity that owns or operates the facility to the state department of health upon the closing of such bonds or obligations.

3. The fees and charges paid by a non-profit hospital corporation, non-profit corporation providing a residential health care facility or non-profit medical corporation pursuant to subdivisions one and two of this section shall be deemed allowable capital costs in the determination of reimbursement rates established pursuant to article twenty-eight of the public health law. The cost of such fees and charges shall not be subject to reimbursement ceilings or other penalties used by the commissioner of health for the purpose of establishing reimbursement rates pursuant to article twenty-eight of the public health law.

Section 2977. Applicability of title

1. The provisions of this title shall not be construed to, nor shall they be implemented in such a manner as to:

(a) require the application of monies pledged to the security of bonds, notes or other obligations in violation of applicable bond covenants; or

(b) otherwise impair the rights of bondholders of the public benefit corporations affected by this title.

2. To the extent precluded by interstate or international compact which creates any public benefit corporation, the provisions of this title shall not apply to any such public benefit corporation until the passage of legislation, by the other party to such compact, which validates or has the same effect as this title.

Title 11 Wrongful Death Actions

Section 2980. Wrongful death; notice of claim

No wrongful death action against a public authority or public benefit corporation shall be commenced unless a notice of claim has been served on the authority or corporation in accordance with the provisions of section fifty-e of the general municipal law.

Section 2981. Wrongful death; limitation period

A wrongful death action against a public authority or public benefit corporation shall be commenced within two years of the happening of the death.

Section 2982. Scope of title

Except where such an action is statutorily required to be brought only in the court of claims, this title shall be applicable to all wrongful death actions brought against a public authority or public benefit

corporation, notwithstanding any inconsistent provisions of law, general, special or local, or any limitation contained in the provisions of any city charter.

Section 2985. Owner liability for failure of operator to comply with toll collection regulations

1. Notwithstanding any other provision of law, every public authority which operates a toll highway bridge and/or tunnel facility is hereby authorized and empowered to impose monetary liability on the owner of a vehicle for failure of an operator thereof to comply with the toll collection regulations of such public authority in accordance with the provisions of this section.

2. The owner of a vehicle shall be liable for a civil penalty imposed pursuant to this section if such vehicle was used or operated with the permission of the owner, express or implied, in violation of toll collection regulations, and such violation is evidenced by information obtained from a photo-monitoring system, provided, however, that no owner of a vehicle shall be liable for a penalty imposed pursuant to this section where the operator of such vehicle has been convicted of a violation of toll collection regulations for the same incident.

3. For purposes of this section, the term "owner" shall mean any person, corporation, partnership, firm, agency, association, lessor or organization who, at the time of the violation and with respect to the vehicle identified in the notice of liability:

(a) is the beneficial or equitable owner of such vehicle; or

(b) has title to such vehicle; or

(c) is the registrant or co-registrant of such vehicle which is registered with the department of motor vehicles of this state or any other state, territory, district, province, nation or other jurisdiction; or

(d) subject to the limitations set forth in subdivision ten of this section, uses such vehicle in its vehicle renting and/or leasing business; and includes

(e) a person entitled to the use and possession of a vehicle subject to a security interest in another person.

For purposes of this section, the term "photo-monitoring system" shall mean a vehicle sensor installed to work in conjunction with a toll collection facility which automatically produces one or more photographs, one or more microphotographs, a videotape or other recorded images of each vehicle at the time it is used or operated in violation of toll collection regulations. For purposes of this section, the term "toll collection regulations" shall mean: those rules and regulations of a public authority providing for and requiring the payment of tolls and/or charges prescribed by such public authority for the use of bridges, tunnels or highways under its jurisdiction or those rules and regulations of a public authority making it unlawful to refuse to pay or to evade or to attempt to evade the payment of all or part of any toll and/or charge for the use of bridges, tunnels or highways under the jurisdiction of such public authority. For purposes of this section, the term "vehicle" shall mean every device in, upon or by which a person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.

4. A certificate, sworn to or affirmed by an agent of the public authority which charged that the violation occurred, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a photo-monitoring system shall be prima facie evidence of the facts contained therein and shall be admissible in any proceeding charging a violation of toll collection regulations, provided that any photographs, microphotographs, videotape or other

recorded images evidencing such a violation shall be available for inspection and admission into evidence in any proceeding to adjudicate the liability for such violation.

5. An owner found liable for a violation of toll collection regulations pursuant to this section shall for a first violation thereof be liable for a monetary penalty not to exceed fifty dollars or two times the toll evaded whichever is greater; for a second violation thereof both within eighteen months be liable for a monetary penalty not to exceed one hundred dollars or five times the toll evaded whichever is greater; for a third or subsequent violation thereof all within eighteen months be liable for a monetary penalty not to exceed one hundred fifty dollars or ten times the toll evaded whichever is greater.

6. An imposition of liability pursuant to this section shall be based upon a preponderance of evidence as submitted. An imposition of liability pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the motor vehicle operating record, furnished pursuant to section three hundred fifty-four of the vehicle and traffic law, of the person upon whom such liability is imposed nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage.

7. (a) A notice of liability shall be sent by first class mail to each person alleged to be liable as an owner for a violation of toll collection regulations. Such notice shall be mailed no later than thirty days after the alleged violation. Personal delivery on the owner shall not be required. A manual or automatic record of mailing prepared in the ordinary course of business shall be prima facie evidence of the mailing of the notice.

(b) A notice of liability shall contain the name and address of the person alleged to be liable as an owner for a violation of toll collection regulations pursuant to this section, the registration number of the vehicle involved in such violation, the location where such violation took place, the date and time of such violation and the identification number of the photo-monitoring system which recorded the violation or other document locator number.

(c) The notice of liability shall contain information advising the person charged of the manner and the time in which he may contest the liability alleged in the notice. Such notice of liability shall also contain a warning to advise the persons charged that failure to contest in the manner and time provided shall be deemed an admission of liability and that a default judgment may be entered thereon.

(d) The notice of liability shall be prepared and mailed by the public authority having jurisdiction over the toll facility where the violation of toll collection regulations occurred.

8. Adjudication of the liability imposed upon owners by this section shall be by the entity having jurisdiction over violations of the rules and regulations of the public authority serving the notice of liability or where authorized by an administrative tribunal and all violations shall be heard and determined in the county in which the violation is alleged to have occurred, or in New York city and upon the consent of both parties, in any county within New York city in which the public authority operates or maintains a facility, and in the same manner as charges of other regulatory violations of such public authority or pursuant to the rules and regulations of such administrative tribunal as the case may be.

9. If an owner receives a notice of liability pursuant to this section for any time period during which the vehicle was reported to the police department as having been stolen, it shall be a valid defense to an allegation of liability for a violation of toll collection regulations that the vehicle had been reported to the police as stolen prior to the time the violation occurred and had not been recovered by such time. If an owner receives a notice of liability pursuant to this section for any time period during which the

vehicle was stolen, but not as yet reported to the police as having been stolen, it shall be a valid defense to an allegation of liability for a violation of toll collection regulations pursuant to this section that the vehicle was reported as stolen within two hours after the discovery of the theft by the owner. For purposes of asserting the defense provided by this subdivision it shall be sufficient that a certified copy of the police report on the stolen vehicle be sent by first class mail to the court or other entity having jurisdiction.

10. An owner who is a lessor of a vehicle to which a notice of liability was issued pursuant to subdivision seven of this section shall not be liable for the violation of the toll collection regulation provided that he or she sends to the public authority serving the notice of liability and to the court or other entity having jurisdiction a copy of the rental, lease or other such contract document covering such vehicle on the date of the violation, with the name and address of the lessee clearly legible, within thirty days after receiving the original notice of liability. Failure to send such information within such thirty day time period shall render the lessor liable for the penalty prescribed by this section. Where the lessor complies with the provisions of this subdivision, the lessee of such vehicle on the date of such violation shall be deemed to be the owner of such vehicle for purposes of this section and shall be subject to liability for the violation of toll collection regulations, provided that the public authority mails a notice of liability to the lessee within ten days after the court, or other entity having jurisdiction, deems the lessee to be the owner. For purposes of this subdivision the term "lessor" shall mean any person, corporation, firm, partnership, agency, association or organization engaged in the business of renting or leasing vehicles to any lessee under a rental agreement, lease or otherwise wherein the said lessee has the exclusive use of said vehicle for any period of time. For purposes of this subdivision, the term "lessee" shall mean any person, corporation, firm, partnership, agency, association or organization that rents, leases or contracts for the use of one or more vehicles and has exclusive use thereof for any period of time.

11. Except as provided in subdivision ten of this section, if a person receives a notice of liability pursuant to this section it shall be a valid defense to an allegation of liability for a violation of toll collection regulations that the individual who received the notice of liability pursuant to this section was not the owner of the vehicle at the time the violation occurred. If the owner liable for a violation of toll collection regulations pursuant to this section was not the operator of the vehicle at the time of the violation, the owner may maintain an action for indemnification against the operator.

12. "Electronic toll collection system" shall mean a system of collecting tolls or charges which is capable of charging an account holder the appropriate toll or charge by transmission of information from an electronic device on a motor vehicle to the toll lane, which information is used to charge the account the appropriate toll or charge. In adopting procedures for the preparation and mailing of a notice of liability, the public authority having jurisdiction over the toll facility shall adopt guidelines to ensure adequate and timely notice to all electronic toll collection system account holders to inform them when their accounts are delinquent. An owner who is an account holder under the electronic toll collection system shall not be found liable for a violation of this section unless such authority has first sent a notice of delinquency to such account holder and the account holder was in fact delinquent at the time of the violation.

13. Nothing in this section shall be construed to limit the liability of an operator of a vehicle for any violation of toll collection regulations.

14. Notwithstanding any other provision of law, all photographs, microphotographs, videotape or other recorded images prepared pursuant to this section shall be for the exclusive use of a public authority in the discharge of its duties under this section and shall not be open to the public nor be used in any court in any action or proceeding pending therein unless such action or proceeding relates to the imposition

of or indemnification for liability pursuant to this section. The public authority shall not sell, distribute or make available in any way, the names and addresses of electronic toll collection system account holders, without such account holders' consent to any entity that will use such information for any commercial purpose provided that the foregoing restriction shall not be deemed to preclude the exchange of such information between any entities with jurisdiction over and or operating a toll highway bridge and/or tunnel facility.

Article 11 Construction; Laws Repealed, When to Take Effect

Section 4000. Construction

This chapter shall not be considered a new act, but a reenactment and a continuation of the several acts consolidated herein; nor shall this chapter affect or impair any right, power or duty conferred or imposed by any such act or any liability or right incurred or action or proceeding taken thereunder.

Whenever the terms "condemnation" or "appropriation" or any other term which refers to the taking of real property by exercise of the power of eminent domain are used in this chapter such terms shall be deemed to mean "acquisition" as such term is defined in section one hundred three of the eminent domain procedure law.

Whenever the power to acquire real property by eminent domain proceedings has been given to any public authority under this chapter or any of its instrumentalities, such acquisition shall be pursuant to the provisions of the eminent domain procedure law, and the provisions contained herein relating to such power shall be given full force and effect to the extent that they are consistent with the provisions of the eminent domain procedure law and to the extent that any of such provisions are inconsistent with the provisions of such law, the provisions of the eminent domain procedure law shall be deemed to be controlling.

Section 4001. Laws repealed

Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed; and all acts and parts of acts, both general and special or local, inconsistent with this chapter are hereby repealed.

Section 4002. When to take effect

This chapter shall take effect immediately.