

TITLE 9
NEW YORK STATE ENERGY RESEARCH AND
DEVELOPMENT AUTHORITY

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§ 1850. Short title. This title may be cited as the "New York state energy research and development authority act".

§ 1850-a. Legislative declaration. It is hereby declared that the need for obtaining and maintaining an adequate and continuous supply of safe, dependable and economical power and energy is a matter of serious concern to the people of the state; that accelerated development and use within the state of new energy technologies to supplement energy derived from existing sources will promote the state's economic growth, protect its environmental values and be in the best interests of the health and welfare of the state's population; and that such development and use requires special efforts to foster research, development, and demonstration in the methods of production and use of new energy technologies. The objective of this title is the development and utilization of safe, dependable, renewable and economic energy sources and the conservation of energy and energy resources.

It is further declared that implementation of this objective can best be effectuated by changing and reconstituting the New York state atomic and space development authority into the New York state energy research and development authority. While maintaining its present commitments to its bondholders, the authority shall direct its efforts toward the development of new energy technologies, with special emphasis on renewable energy sources and energy conservation technologies.

It is further declared and found that the objective of this title can be achieved by (1) continuing the authority's authorization to issue bonds and notes and to lend or otherwise apply the proceeds therefrom for the benefit of gas and power companies in financing projects including, without limitation, experimental or developmental facilities implementing new energy technologies, pollution control facilities, facilities required by the public interest in development, health, recreation, safety, conservation of natural resources and aesthetics, and facilities for the furnishing of electric energy or gas, and (2) empowering the authority to issue bonds and notes and to lend or otherwise apply the proceeds therefrom to finance special energy projects for the benefit of persons in the state.

§ 1851. Definitions. As used or referred to in this title, unless a different meaning clearly appears from the context:

1. "Nuclear fission energy" shall mean all forms of energy released in the course of nuclear fission.
2. "Authority" shall mean the New York state energy research and development authority continued pursuant to section one thousand eight hundred fifty-two of this title.
3. "Bonds" and "notes" shall mean such bonds and notes as are issued

by the authority pursuant to this title.

4. "Comptroller" shall mean the comptroller of the state.

5. "Person" shall mean any natural person, firm, association, public or private corporation, public utility, organization, partnership, trust, estate, or joint stock company, or any political subdivision of the state, or any officer or agent thereof.

6. "Real property" shall mean lands, waters, rights in lands or waters, structures, franchises, improvements and interests in land, including lands under water and riparian rights, and any and all other things and rights usually included within said term and includes also any and all interests in such property less than full title, such as easements permanent or temporary, rights-of-way, uses, leases, licenses and all other incorporeal hereditaments in every estate, interest or right, legal or equitable.

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

8. "State agency" shall mean any officer, department, board, commission, bureau, division, corporation, agency or instrumentality of the state.

9. "Commissioner" shall mean the commissioner of transportation of the state of New York.

10. "New energy technologies" shall mean all methods used to produce, distribute, conserve and store energy by methods not in common commercial use, with emphasis on renewable energy sources including but not limited to solar, wind, bioconversion and solid waste.

11. "Energy conservation technologies" shall mean all methods of conserving energy, of improving the efficiency of energy utilization and of preserving and protecting the environment and the public health and safety in connection with the use of energy.

13. "Special energy project" shall mean any land, works, system, building or other improvement, and all real and personal properties of any nature or any interest in any of them deemed necessary or desirable in connection therewith or incidental thereto, whether or not now in existence or under construction, which shall be suitable for or related to the furnishing, generation, production, exploration, transmission, distribution, conservation, conversion or storage of energy or energy resources, or the conversion of oil-burning facilities to alternate fuels, or for the acquisition, extraction, conversion, transportation, storage, loading, unloading or reprocessing of fuel of any kind for industrial, manufacturing, warehousing, commercial, storage, research, recreational, educational, dormitory, health, mental hygiene or multi-family housing facilities or purposes and which may, but shall not be required to, employ new energy technologies.

14. "Low-level radioactive waste" shall mean radioactive waste that:

a. is not high-level radioactive waste, transuranic waste, spent nuclear fuel, or the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for

its source material content; and

b. the United States nuclear regulatory commission, consistent with federal law, and in accordance with paragraph a of this subdivision, classifies as low-level radioactive waste.

15. "Low-level radioactive waste management facilities" shall mean facilities for permanent disposal of low-level radioactive waste and any associated facilities for treatment and handling of such waste, including but not limited to, facilities for purposes of stabilization, volume reduction, or the protection of health and safety of workers or members of the public.

16. "Permanent disposal facilities" shall mean low-level radioactive waste management facilities for permanent disposal of low-level radioactive waste generated within the state of New York other than such waste which is a federal responsibility pursuant to the provisions of federal law pertaining to state and federal responsibilities for disposal of low-level radioactive waste.

17. "Generate" or "generation", when used with respect to low-level radioactive waste, shall mean the production, or causing the production of, or activity which otherwise results in the creation or increase in volume of low-level radioactive waste. A person who generates low-level radioactive waste includes one who personally, or through the actions of any agent, employee, or contractor, generates low-level radioactive waste.

§ 1852. New York state energy research and development authority. 1.

The authority heretofore known and designated as the "New York state atomic and space development authority" is hereby continued and shall hereafter be known and designated as the New York state energy research and development authority. Reference in any provision of law, general, special or local, or in any rule, regulation or public document to the New York state atomic research and development authority or to the New York state atomic and space development authority shall be deemed to be and construed as a reference to the authority continued by this section. The authority shall be a body corporate and politic, constituting a public benefit corporation.

2. The membership of the authority shall consist of thirteen members, to be as follows: the commissioner of the department of transportation, the commissioner of the department of environmental conservation, the chair of the public service commission, the chair of the power authority of the State of New York, all of whom shall serve ex-officio; and nine members appointed by the governor by and with the advice and consent of the senate; one of whom shall be an engineer or a research scientist with a degree in the physical sciences or engineering who has not been employed in the nuclear fission field for three years preceding the appointment and who shall not be so employed during his or her term; one

of whom shall be an economist who shall not have received more than one-tenth of his or her income from an electric utility or gas utility for three years preceding the appointment and who shall not so derive more than one-tenth of his or her income during such term; one of whom who shall be a member of a not-for-profit environmental group; one of whom shall be a member of a not-for-profit consumer group; one of whom who shall be an officer of a utility primarily engaged in the distribution of gas; and one whom shall be an officer of an electric utility. The governor shall designate the chair. Of the nine members appointed by the governor, two shall be appointed for terms expiring April first, nineteen hundred seventy-eight, two for terms expiring April first, nineteen hundred eighty, two for terms expiring April first, nineteen hundred eighty-one, and three for terms expiring April first, nineteen hundred eighty-two. Persons appointed by the governor for full terms as successors to such members shall serve for terms of six years each commencing as of April first. In the event of a vacancy occurring in the office of a member by death, resignation or otherwise, the governor shall appoint a successor, by and with the advice and consent of the senate, to serve the balance of the unexpired term.

3. The chairman shall preside over meetings of the authority and shall serve as the primary liaison between the members and authority staff. A vice-chairman may be elected by the authority from among its other members to serve as such at the pleasure of the authority. The vice-chairman shall preside over all meetings of the authority in the absence of the chairman and shall have such other duties as the authority may prescribe. The president shall be the chief executive officer of the authority and shall be primarily responsible for the discharge of the executive and administrative functions of the authority.

4. The members shall serve without compensation for their services as members, but they shall be entitled to reimbursement for their actual and necessary expenses incurred in the performance of their official duties.

5. Any member (except the chairman), the commissioner of the department of environmental conservation and the chairman of the public service commission may engage in private employment, or in a profession or business, subject to the limitations contained in sections seventy-three and seventy-four of the public officers law; provided however, that notwithstanding any other provision of law, the members of the authority who are officers of an electric utility or a utility primarily engaged in the distribution of gas shall not be prohibited from participating and voting on any bond issue of the authority relating to air and water pollution facilities for any utility other than for the utilities of which such members are officers respectively. The authority shall, for the purposes of such sections, be a "state agency" and all members, including the chairman, shall be "officers" of

the agency for the purposes of said sections.

6. Notwithstanding any inconsistent provisions of law, general, special or local, no officer or employee of the state, or of any civil division thereof, shall be deemed to have forfeited or shall forfeit his office or employment by reason of his acceptance of membership on the authority; provided, however, a member who holds such other public office or employment shall receive no additional compensation or allowance for services rendered pursuant to this article, but shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of such services.

7. The governor may remove any member for inefficiency, neglect of duty or misconduct in office after giving him a copy of the charges against him, and an opportunity to be heard, in person or by counsel, in his defense, upon not less than ten days' notice. If any member shall be so removed, the governor shall file in the office of the department of state a complete statement of charges made against such member, and his findings thereon, together with a complete record of the proceedings.

8. A majority, but no fewer than five, of the 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.

9. The authority may appoint such persons to serve as officers, agents or employees of the authority as it may deem advisable and may prescribe their duties and fix their compensation, subject to the civil service law and the rules and regulations of the civil service commission of the state.

10. The authority may appoint one or more advisory committees consisting of not more than seven members each to consider and advise the authority upon all matters submitted to them by the authority and to recommend to the authority such changes in the administration of this title and the operations of the authority as the advisory committee may deem desirable. Members of advisory committees shall serve without salary for such terms, not to exceed four years, as the authority may determine, and shall be entitled to reimbursement for their actual and necessary travel expenses incurred in the performance of their official duties.

§ 1853. Approval power of the governor. 1. No action taken at any meeting of the authority shall have force or effect until the governor shall have an opportunity to approve or veto the same.

2. For the purpose of procuring such approval or veto, the authority shall by rule designate an officer of the authority to transmit to the governor at the executive chamber in Albany a certified copy of the minutes of every meeting of the authority as soon after the holding of such meeting as such minutes can be written out. The governor shall, within fifteen days after such minutes shall have been delivered to the

executive chamber as aforesaid, cause the same to be returned to the authority either with his approval or with his veto of any action therein recited as having been taken, provided, however, that if the governor shall not return the said minutes within the said period then at the expiration thereof any action therein recited shall have full force and effect according to the wording thereof.

3. If the governor within the said period returns the said minutes with a veto against any action recited therein, then such action shall be null and void.

4. The governor may by order filed with the authority relieve the authority from the duty of procuring his approval of its action upon any particular matter or class of matters, and thereupon the authority shall be relieved from reporting the same to him.

§ 1854. Purposes and specific powers of the authority. The purposes of the authority shall be to develop and implement new energy technologies consistent with economic, social and environmental objectives, to develop and encourage energy conservation technologies, to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and industrial pollution control facilities at the Saratoga Research and Development Center, and to promote, develop, encourage and assist special energy projects and thereby advance job opportunities, health, general prosperity and economic welfare of the people of the state of New York. In carrying out such purposes, the authority shall, with respect to the activities specified, have the following powers:

1. Research, development and demonstration. To conduct, sponsor, assist and foster programs of research, development and demonstration in new energy technologies including but not limited to (a) energy conservation, (b) production of power from new sources with emphasis on renewable energy sources such as solar, wind, bioconversion and solid waste, (c) storage of energy with emphasis on inertial and battery storage, (d) conversion and/or technological improvement of facilities now utilizing nuclear fission energy and fossil fuel energy technologies, (e) transmission and distribution of power, and (f) conversion of energy and improvements of efficiencies of such conversion, including the power after assessing and taking into account environmental considerations thereof, to establish, acquire, operate, develop and manage facilities therefor.

2. The provision of services. To provide services required for the development and use of new energy technologies and related methods by the industrial, commercial, medical, scientific, public interest, educational and governmental organizations within the state, including the power to establish, acquire and develop facilities therefor not

otherwise available within the state, and to operate and manage such facilities.

3. Cooperation with gas and power companies. To contract with or enter into joint undertakings with any gas or power company, or power authority of the state of New York, or more than one of them, to (a) Participate in the construction and operation of experimental or developmental facilities which implement new energy technologies which have prospects of reducing the economic, environmental and social costs of energy production and utilization.

(b) Participate in the incorporation of features, including facilities which incorporate new energy technologies, in nuclear power plants and the construction of associated facilities to the extent required by the public interest in development, health, recreation, safety, conservation of natural resources and aesthetics.

(c) Participate in the incorporation of features, including facilities which incorporate new energy technologies, in fossil fuel power plants and the construction of associated facilities to the extent required by the public interest in development, health, recreation, safety, conservation of natural resources and aesthetics.

(d) Participate in the construction of facilities to be used for the furnishing of electric energy or gas to the extent required by the public interest in development, health, recreation, safety, conservation of natural resources and aesthetics.

(e) Develop, prepare, and furnish by sale or lease real property owned, held, or acquired by the authority within the state to be used for the construction and operation of generating facilities based on new energy technologies and related facilities, provided that no such contract or joint venture shall be entered into which shall permit the authority to distribute or sell any power or energy to any person or entity other than the other contracting party or parties or joint venturer or venturers, and provided further that all power and energy received by power authority of the state of New York, pursuant to any such contract or joint venture, shall be distributed and sold only to such persons as power authority of the state of New York may sell power pursuant to law.

4. Water desalination. To contract with one or more water distribution companies or agencies to participate in the construction and operation of power generating facilities for the purpose of desalination or distribution of water, and to develop, prepare, and furnish by sale or lease, real property owned, held or acquired by the authority within the state to be used for the construction and operation of such facilities and facilities related thereto, provided that the authority shall not enter into any such contract relating to any such facility which also produces electric power for purposes of sale unless the authority also contracts with one or more power companies with respect to the construction and operation of such facility and the distribution and use

of such power.

5. The dissemination of information. To accumulate and disseminate information relating to the development and use of new energy technologies and energy conservation technologies, including the power to conduct, sponsor, assist and foster studies and surveys, and publish the results thereof.

6. (a) To continue, modify, amend, or terminate such contractual agreements as may be in force at the effective date of this subdivision with regard to the Western New York Nuclear Service Center and the Saratoga Research and Development Center, or take such other action as the authority may deem necessary or appropriate with respect to such Centers in the furtherance of the public interest in safe, reliable and economical energy supplies or protection of public health and safety and the environment.

(b) (i) Notwithstanding the provisions of any general or special law to the contrary, the director of the budget and the chair of the authority are each authorized to enter into one or more service contracts, and to amend or supplement any existing service contract, with respect to programs, projects, and activities of the authority pursuant to this subdivision, upon such terms as the director of the budget and the chair of the authority may agree, including, but not limited to, provisions relating to the respective obligations of the state and the authority with respect to administration, management, maintenance, and use of the real property at the Western New York Nuclear Service Center held by the authority, design, construction, modification, operation, and maintenance of facilities thereon, and implementation of programs, projects, or activities to improve or correct conditions thereon, including, but not limited to, the West Valley demonstration project, and provisions providing for the payment of (A) all fees and charges of, and expenses and other non-asset costs of financing incurred by, the authority in connection with the issuance and administration of special obligation bonds or notes to pay for or reimburse the state with respect to such actions, and (B) all debt service payments on such bonds and notes. Provided, however, that the aggregate net proceeds of any such bonds or notes issued, excluding any bonds or notes issued for the purpose of refunding other bonds and notes issued under this subdivision, shall not exceed the aggregate of amounts appropriated for such actions in the state fiscal year ending March thirty-one, nineteen hundred ninety-three and any state fiscal year thereafter up to and including the state fiscal year ending March thirty-first, nineteen hundred ninety-nine, not including amounts to be applied to the payment of all fees and other charges of, and expenses and other non-asset costs of financing incurred by, the authority in connection with the issuance and administration of such bonds and notes; and, capitalized interest and debt service reserve funds established for such bonds or notes and the acquisition of insurance, letters of credit

or other credit enhancement or liquidity facilities obtained in connection with such bonds or notes.

(ii) Of the moneys expended from appropriations made for the legal requirements of the state debt service and lease purchase payments and other special contractual obligations, for payment to the authority for payment of principal and interest on bonds issued to finance activities at the Western New York Nuclear Service Center pursuant to one or more service contracts between the state and the authority, an amount not to exceed the amount of such payment as determined by the director of the budget shall be reimbursed to the comptroller according to a schedule determined by the director of the budget, for deposit in the general debt service fund, by the authority.

(iii) Any such contract entered into pursuant to subparagraph (i) of this paragraph shall not exceed thirty years in duration and shall provide that the obligation of the state to fund or to pay the amounts therein provided for shall not constitute a debt of the state within the meaning of any constitutional or statutory provision and shall be deemed executory only to the extent of moneys available therefor and that no liability shall be incurred by the state beyond the moneys available for such purpose, and that such obligation is subject to annual appropriation by the legislature.

(iv) Any such contract or any payments made or to be made thereunder may be assigned and pledged by the authority as security for its bonds and notes issued to pay for or reimburse the state with respect to actions undertaken pursuant to this subdivision.

(v) The comptroller is authorized to receive from the authority any portion of proceeds of special obligation bonds or notes issued to pay for or reimburse the state with respect to actions undertaken pursuant to this subdivision and to credit such amounts to the capital projects fund or any other appropriate fund.

7. To advise the legislature of recommendations for implementing new energy technologies and energy conservation measures, annually or so often as the authority shall deem appropriate.

8. Special energy projects. (a) To extend credit and make loans from bond proceeds to any person for the construction, acquisition, installation, reconstruction, improvement, maintenance, equipping, furnishing or leasing of any special energy project or for the reimbursement to any person for costs incurred in connection with a special energy project completed or not completed at the time of such credit or loan, which credits or loans may, but need not, be secured by mortgages, contracts, leases or other instruments, upon such terms and conditions as the authority shall determine reasonable in connection with such credits or loans.

(b) In the exercise of powers granted in paragraph a of this subdivision in connection with any special energy project, to require the inclusion in any contract, lease, loan agreement or other instrument

of such provisions for the financing of such project and such other financial or other covenants as the authority may deem necessary or desirable and to do all things and to execute all instruments necessary and desirable in connection therewith; provided, however, that no contract, lease, loan agreement or other agreement entered into by the authority in furtherance of this authorization shall permit the authority to distribute or sell any power or energy to any person other than a contracting party.

10. To coordinate the state's administration of any energy or energy resource programs of the federal government, including but not limited to those concerned with conservation, allocation, management or education, and to formulate and from time to time revise a state energy conservation plan to be submitted pursuant to the federal Energy Policy and Conservation Act of 1975 last amended by Pub. L. 102-486, Title I, §123(a).

10-a. (a) To administer the air pollution mitigation fund established pursuant to section ninety-nine-g of the state finance law and consisting of moneys collected by the public service commission as an air pollution mitigation offset pursuant to subdivision two of section sixty-six-k of the public service law.

(b) To disburse moneys from such fund for the following purposes: (i) to reduce acid precipitation through energy efficiency, or through public benefit research and development, including, but not limited to, renewable energy; or (ii) the monitoring of, or research related to, the impact of acid precipitation deposition.

(c) To establish guidelines pertaining to the allocation of moneys from such fund.

11. To advise and assist the governor and the legislature in the development and implementation of state policies relating to energy and energy resources.

12. To require and receive from any agency of the state or any political subdivision thereof assistance and data.

13. To act as a central repository and clearinghouse for information on all energy and energy resource related matters.

14. To apply for and to administer federal research and development grants and other monies for the benefit of consumers.

15. To prepare an integrated resource plan specifying actions to be taken in the event of the declaration by the governor of an energy or fuel supply emergency pursuant to section 5-117 of the energy law.

16. To promulgate energy use standards after consultation with the commissioner of the office of general services for the purchase, lease, use or maintenance of state buildings and equipment.

17. To implement the provisions of sections 5-108, 5-111, 5-113 and 5-117 of article five and articles six, seven, eight and ten of the energy law.

In exercising the powers granted by this title, the authority shall,

insofar as practicable, cooperate and act in conjunction with industrial, commercial, medical, scientific, public interest and educational organizations within the state, and with agencies of the federal government, of the state and its political subdivisions, of other states, and joint agencies thereof.

In carrying out its corporate purposes and in exercising the powers granted by this title, the authority shall be regarded as performing an essential governmental function.

§ 1854-a. Nuclear waste repository siting. 1. As used or referred to in this title: a. "Repository for the terminal storage of nuclear waste" shall mean a facility where nuclear waste is disposed of in such a way as to be permanently isolated from the environment for the period of time that is necessary for such wastes to become harmless, even if such facility contains a means for retrieving such wastes. This term shall include deep geological formations and any other disposal technology authorized by the National Waste Terminal Storage Program, but shall not include existing nuclear waste facilities at the Western New York Nuclear Services Center.

b. "Nuclear waste" shall mean high level liquid radioactive wastes, solid high level radioactive wastes, spent nuclear fuel elements, and wastes bearing quantities of transuranic elements which are not authorized for burial in shallow land burial areas pursuant to regulation or license by the United States Nuclear Regulatory Commission or the state of New York pursuant to agreement with the United States Nuclear Regulatory Commission.

2. No repository for the terminal storage of nuclear waste as defined in this section shall be sited, constructed, or operated within the state, unless the legislature and the governor of the state shall be consulted and shall concur by statute in the establishment of such repository.

3. Prior to approval by the legislature the authority shall, upon the request of the governor, review any proposal for a repository for the terminal storage of nuclear waste and, in order to assist the governor and the legislature in their determinations of need and safety, the authority shall:

a. Conduct or cause to be conducted a complete study on all issues involved in the establishment of a repository for the terminal storage of nuclear waste, including but not limited to, all long and short term health and safety aspects, the reliability of long-term isolation, the relationship between federal and state responsibility, and the potential state fiscal responsibility both one time and recurring.

b. Solicit and evaluate reports and recommendations from the state energy office, department of environmental conservation, department of public service, department of transportation, department of commerce,

department of health and any other state agencies that are deemed appropriate.

c. Prepare and submit to the legislature an environmental impact statement pursuant to article eight of the environmental conservation law.

d. Determine whether the proposed technology and proposed site can be utilized for the safe and permanent disposal of nuclear waste and will not result in a significant environmental hazard or other threat to the public health, safety or welfare.

e. Conduct public hearings in various parts of the state in such a way as to insure the widest possible input from residents of the state including but not limited to residents who live in close proximity to a proposed site or sites.

f. Prepare a detailed estimate of the anticipated costs to construct and operate such a repository for the terminal storage of nuclear waste, the extent to which such costs will be borne by the state and the time period of probable continued costs.

§ 1854-b. Low-level radioactive waste management facilities. In addition to those purposes otherwise set forth in this title, the purposes of the authority shall include the management of low-level radioactive waste. In carrying out that purpose, the authority shall have the powers and responsibilities set forth in sections eighteen hundred fifty-four-c and eighteen hundred fifty-four-d of this title, in addition to those otherwise set forth in this title.

§ 1854-c. Permanent disposal facilities. 1. The authority shall consult and cooperate with the department of environmental conservation and the commission for siting low-level radioactive waste disposal facilities pursuant to the provisions of article twenty-nine of the environmental conservation law and such department and commission shall make available to the authority all information with respect to potential sites and disposal methods which may be relevant to the design of, or preparation of applications for state licenses, permits, or other approvals for, such facilities. The authority shall make preparations for submitting as soon as practicable applications for any state licenses, permits, or other approvals required for the construction and operation of permanent disposal facilities.

2. Upon certification by the department of environmental conservation of siting and disposal method selections for permanent disposal facilities pursuant to section 29-0105 of the environmental conservation law, the authority shall immediately complete development of and submit, as soon as practicable after such certification, but no later than the first day of January nineteen hundred ninety, complete applications for

any state licenses, permits, or other approvals required for the construction and operation of such permanent disposal facilities, in accordance with the siting and disposal method certification of such department. Upon such certification, the authority shall also immediately take steps to acquire and hold in the name of the state of New York any property interests which it may need to obtain for such permanent disposal facilities.

3. Upon receipt of required state licenses, permits, or other approvals for such permanent disposal facilities and if access is not available on reasonable terms to disposal facilities outside of New York for low-level radioactive waste estimated to be generated within New York state during the life of such permanent disposal facilities, the authority is authorized and directed to immediately construct, and to operate and maintain, permanent disposal facilities in accordance with such licenses, permits, and other approvals. Permanent disposal facilities shall be completed and begin operation no later than the first day of January nineteen hundred ninety-three.

§ 1854-d. Generator reporting and fees. 1. Reports. a. Any person who generates low-level radioactive waste in New York shall submit to the authority, on dates specified by the authority, but in no event later than nine months after the effective date of the low-level radioactive waste management act and, thereafter, no less frequently than annually, reports detailing the classes and quantities of low-level radioactive waste generated, stored by the generator for decay or for later transfer to other facilities, or transferred by the generator to other facilities, the general type of generator (e.g., medical, university, industry, electric utility, government), and such additional information as the authority may reasonably require on the nature and characteristics (including, without limitation, chemical and physical characteristics, properties, or constituents, radionuclides present, curie content or concentration of radioactivity) of such waste and the extent of reduction in quantity and the nature and extent of reduction or other change in the nature or characteristics of such waste as a result of treatment or interim storage after generation and before delivery to facilities for permanent disposal of such waste. The authority shall provide by regulation appropriate procedures for the preparation and submission of such reports, including procedures to designate a person or persons responsible for such filing when more than one person is the generator of the same waste. Such reports shall be subject to the provisions of article six of the public officers law.

b. Commencing no later than the first day of July nineteen hundred eighty-seven, the authority shall submit annually to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, and the minority leader of the assembly,

and thereafter, not later than one hundred eighty days after the end of each calendar year, a report summarizing and categorizing, by type of generator and region of generation, the nature, characteristics, and quantities of low-level radioactive waste generated in New York during such calendar year.

2. Fees. a. (i) Pursuant to this title the authority shall, pursuant to regulations promulgated in accordance with article two of the state administrative procedure act, establish, revise, assess, and collect reasonable rates, charges, or other fees upon the disposal of low-level radioactive waste generated in New York sufficient to fully recover all costs and expenses of the state and its agencies and authorities associated with low-level radioactive waste management facilities. Such assessed rates, charges, or other fees shall be paid to the authority in the manner, and accompanied by such returns, reports, or other documentation as the authority may prescribe. Fees paid shall be treated as expenses for purposes of recovery in rates. Surcharges collected by or for facilities which accept low-level radioactive waste generated in New York State for disposal pursuant to the Federal Low-level Radioactive Waste Policy Amendments of nineteen hundred eighty-five (Pub. Law 99-240), but deposited in escrow pursuant to section 5 (d) (2) of such law shall be paid to and received by the authority. Such payments shall be disbursed or transferred pursuant to this paragraph and shall be used for the purpose of reducing the amounts otherwise recoverable as assessments imposed pursuant to paragraph c of this subdivision.

(ii) The authority shall deposit the proceeds from such rates, charges, or other fees in a separate segregated account maintained solely for the purpose of holding such deposits. The authority shall first apply the proceeds of the account to payments of principal and interest on bonds, notes or other obligations issued by the authority for the purposes of the low-level radioactive waste management act. Upon appropriation or pursuant to other legislative authorization, disbursements or transfers from such account shall be made solely for other costs and expenses incurred under the low-level radioactive waste management act.

(iii) In establishing, revising, assessing, and collecting such reasonable rates, charges, or other fees associated with low-level radioactive waste management facilities or incurred under the low-level radioactive waste management act, the authority shall include, but need not be limited to, such amounts as will meet all incremental costs and expenses of:

A. selecting, developing, licensing, constructing, operating, and maintaining such facilities;

B. establishing reserves for related purposes, including, but not limited to, debt service, decontamination and decommissioning, closure, and post-closure care, and contingencies;

C. making reimbursements of expenditures from appropriations to state agencies or authorities to implement the low-level radioactive waste management act; and

D. making payments in lieu of taxes.

(iv) The authority may establish and revise, not inconsistent with federal law and regulation, reasonable classifications of low-level radioactive waste based upon the nature, class, characteristics (other than type of generator) or condition of such waste. The authority may utilize such classifications for purposes of establishing or revising the rates, charges, or other fees upon the disposal of such waste pursuant to paragraphs b and c of this subdivision.

b. Upon delivery of low-level radioactive waste to permanent disposal facilities owned or operated by the authority, the rates, charges, or other fees as established or revised by the authority for disposal of such waste at such facilities, and related services, shall be paid. Such rates, charges, or other fees shall be sufficient to meet all costs and expenses which may be reasonably and practically identified or allocated to permanent disposal facilities, over the life of such facilities, and the low-level radioactive waste disposed of at such facilities, including without limitation, all costs and expenses associated with: development, licensing, operation, maintenance, and meeting debt service requirements, or requirements for repayment of expenditures from appropriations for capital costs of such facilities, which requirements are due after such facilities begin accepting low-level radioactive waste; establishing reserves, including but not limited to reserves for decontamination and decommissioning, closure and post-closure care, and contingencies, including but not limited to potential accidents, damages, and injuries; and making any payments in lieu of taxes or fees for local assistance and repayments of any amounts expended from appropriations for aid to localities with respect to permanent disposal facilities, provided, however, that all capital costs incurred prior to the receipt and acceptance of low-level radioactive waste at the disposal facilities shall be recovered in a period of not less than twenty years after such receipt and acceptance.

c. (i) During the period before the commencement of operation of permanent disposal facilities owned or operated by the authority, expenditures from appropriations to the departments of environmental conservation and health and the commission for siting low-level radioactive waste disposal facilities for the purpose of implementing the low-level radioactive waste management act shall be recovered through assessment against United States nuclear regulatory commission licensees for nuclear electric generating facilities located in the state of New York which have full power operating licenses. For the state fiscal year ending March thirty-first, nineteen hundred eighty-seven and each successive state fiscal year until commencement of operation of the permanent disposal facilities, the chairman of the

authority shall estimate such expenditures and shall assess such estimated expenditures on a pro rata basis in proportion to the number of reactors with full power operating licenses of each such licensee. For the assessment for the state fiscal year ending March thirty-first, nineteen hundred eighty-seven, such estimated expenditures shall be based upon actual appropriations available to such state agencies for such fiscal year for such purpose and shall be billed by the authority as soon as practicable after the effective date of the low-level radioactive waste management act and paid by such licensees not later than December thirty-first, nineteen hundred eighty-six. For the assessment for each subsequent fiscal year, such estimated expenditures shall be based upon the proposed appropriations to such state agencies for such purpose, net of any over or under assessment for prior fiscal years compared to the latest available data on such expenditures for such prior fiscal years, and shall be billed by the authority on or before February first preceding such fiscal year and paid on or before April first of such fiscal year; provided, however, that a licensee may elect to make partial payments for such assessments on March tenth of the preceding fiscal year and on June tenth, September tenth, and December tenth of such fiscal year. Each such partial payment shall be an amount not less than twenty-five per centum of the total annual assessment against such licensee for the relevant fiscal year. The authority shall establish and maintain records to account for assessments made against and received from each licensee. Upon receipt of such assessments, and pursuant to an agreement with the director of the budget, the authority shall transmit to the state comptroller such amount as shall be required to reimburse actual expenditures made and subject to assessment. The amounts so assessed, notwithstanding their assessment, shall be included as cost and expenses for purposes of computing and imposing rates, charges, or other fees pursuant to paragraphs a and b of this subdivision. In imposing such rates, charges, or other fees pursuant to such paragraph b, the authority shall provide a credit to the assessed licensees until such time as the aggregate of all such credits for a licensee shall equal the actual assessments paid by such licensee, plus interest at a reasonable market rate.

(ii) In the calculation of the assessment due pursuant to this paragraph for any fiscal year beginning on or after April first, nineteen hundred ninety-seven, the net of any over or under assessment for fiscal years ending on or before March thirty-first, nineteen hundred ninety-six, shall be deemed to be zero.

d. (i) The authority may refuse to accept at facilities established pursuant to section eighteen hundred fifty-four-b of this title any low-level radioactive waste generated by a person who has failed to submit to the authority, the one or more reports required by the authority pursuant to subdivision one of this section.

(ii) The proceeds of any penalty or interest collected pursuant to

subparagraph (i) of paragraph a of subdivision three of this section shall be remitted to the authority for the purposes of the low-level radioactive waste management act.

3. Violations. a. Any failure or refusal to file a report, return, or other documentation, or related information, required pursuant to the provisions of this section shall be deemed a violation of the provisions of, and a failure to perform a duty imposed by, this section and shall be subject to the following civil and criminal penalties:

(i) By a civil penalty, in the case of a first violation, not to exceed five thousand dollars, and in the case of a second or subsequent violation, a civil penalty not to exceed ten thousand dollars; which penalty may be assessed and collected by a court in any action or proceeding pursuant to subparagraph (ii) of this paragraph in addition to any criminal penalty which may be assessed for such violation.

(ii) By a misdemeanor, in the case of a willful violation by a person having any of the culpable mental states defined in section 15.05 of the penal law, which shall be deemed a misdemeanor, and upon a first conviction thereof, by a fine not to exceed five thousand dollars, or by imprisonment for a term of not more than six months, or both such fine and imprisonment; and, upon a second or subsequent conviction thereof, punishment by a fine not to exceed ten thousand dollars, or by imprisonment for a term of not more than one year, or by both such fine and imprisonment.

b. The attorney general shall institute such civil proceedings as the authority may request for the purpose of enforcing the provisions of this section, and such criminal proceedings as the authority may request for the purpose of prosecuting criminal violations of this section.

4. Upon appropriation or other legislative authorization and consistent with a repayment agreement executed with the director of the budget, the authority shall repay from the special account established pursuant to subparagraph (ii) of paragraph a of subdivision two of this section to the general fund, capital projects fund, or any other fund all amounts expended from appropriations made to the authority, the department of environmental conservation, the commission for siting low-level radioactive waste disposal facilities, the department of health, or the department of labor for actual and incremental expenses in the selection, development, licensing, construction, operation, maintenance, decontamination and decommissioning, closure and post-closure care of low-level radioactive waste management facilities, including any regulatory program associated therewith, or for aid to localities.

5. The authority may establish reasonable terms and conditions for receipt, acceptance or disposal of low-level radioactive waste at any facilities developed pursuant to section eighteen hundred fifty-four-c of this title, including but not limited to packaging, identification of the nature and sources of the waste and the generators, shippers, or

carriers of such waste, or other persons having any care or custody of such waste from the place of generation to arrival at such facilities, and requirements for bonds, insurance, or other forms of financial protection or assurance of performance by persons responsible for such waste.

6. Title to any low-level radioactive waste shall at all times remain in the generator of such waste, including the period following acceptance of such waste by the authority at the permanent disposal facilities. Acceptance at permanent disposal facilities shall not occur until completion of such inspection and examination of the waste and determination of compliance with applicable terms and conditions, including but not limited to payment of applicable fees, as the authority may require.

7. Notwithstanding the provisions of subdivision twelve of section eighteen hundred fifty-five of this title, the authority shall enter into agreements to pay annual sums in lieu of taxes to any municipality or taxing district of the state with respect to any real property acquired and held by the authority in the state or improvements to any real property held by the authority in the state, which real property was acquired or improvements were made after the effective date of the low-level radioactive waste management act and for the purposes of such act; provided, that any amount so paid shall be recovered through rates, charges, or other fees applicable to disposal of low-level radioactive waste, pursuant to subdivision two of this section.

8. Actions by the authority pursuant to the provisions of section eighteen hundred fifty-four-c of this title shall be subject, where applicable, to the environmental and judicial review provisions set forth in article twenty-nine of the environmental conservation law.

§ 1855. General powers of the authority. Subject to the other provisions of this title and the provisions of any contract with bondholders or noteholders, the authority shall have the following powers in addition to any powers specifically conferred upon the authority elsewhere in this title:

1. To sue and be sued.
2. To have a seal and alter the same at pleasure.
3. To make and alter by-laws for its organization and internal management.
4. To make rules and regulations governing the exercise of its corporate powers and the fulfillment of its corporate purposes under this title, which shall be filed with the department of state in the manner provided by section one hundred two of the executive law.
5. To purchase, receive, lease or otherwise acquire, to hold in the name of the state or otherwise, and to sell, convey, mortgage, lease, pledge or otherwise dispose of, upon such terms and conditions as the

authority may deem advisable, real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and to the use thereof, including but not restricted to any real property acquired or held by the authority pursuant to the provisions of section eighteen hundred fifty-six of this title and any real or personal property acquired by the authority in the satisfaction of obligations contained in contracts, leases or other arrangements.

6. To enter into contracts, leases or other arrangements providing for the establishment, operation, development and management of any property or facility under the jurisdiction of the authority.

7. To enter into contracts, leases or other arrangements permitting any person to use any property or facility under the jurisdiction of the authority; permitting such person to build or add facilities or improvements upon such property or facility; and providing, at the discretion of the authority, for the acquisition by the authority of any such facilities or improvements built or added by such person, upon such terms and conditions as the authority may deem advisable.

8. To sell or otherwise make available, upon such terms and conditions as the authority may deem advisable, any product, by-product or service produced in or provided by any facility under its jurisdiction.

9. To fix and collect fees, rentals and charges for the use of any property or facility under its jurisdiction, or for the sale of any product, by-product or service produced in or provided by any such facility, and to establish the rights and privileges created upon payment thereof. Such fees, rentals and charges shall be established by the authority so as to produce, in the judgment of the authority, revenues sufficient, together with any other funds available to the authority, to meet the expenses of maintenance and operation of the facilities of the authority, to repay any moneys repayable to the state, to fulfill the terms of agreements with the holders of its bonds, notes or other obligations, and to provide funds for such other corporate purposes as the authority may deem appropriate.

10. To enter into any contracts and to execute all instruments necessary or convenient for the exercise of its corporate powers and the fulfillment of its corporate purposes under this title.

11. To borrow money and to issue bonds, notes or other obligations and to provide for the rights of the holders thereof.

12. To enter into agreements to pay annual sums in lieu of taxes to any municipality or taxing district of the state in respect of any real property which is owned by the authority, leased by the authority to a person and located in such municipality or taxing district, provided, however, that the amount so paid for any year upon any such property shall not exceed the sum last paid as taxes on such property to such municipality or taxing district prior to the time of its acquisition by the authority.

13. To procure insurance, or obtain indemnification from the federal

government or other persons, against any loss in connection with the assets of the authority and any liability in connection with the activities of the authority, such insurance or indemnification to be procured or obtained in such amounts, and from such sources, as the authority deems to be appropriate.

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

15. To enter into any lands, waters or premises for the purpose of making borings, soundings, surveys or other investigations necessary to the purposes of the authority or to public health and safety.

16. To engage the services of bond counsel, financial advisors, accountants, engineers, attorneys and other private consultants on a contract basis for rendering professional and technical assistance and advice.

17. To do all things necessary or convenient to carry out its corporate purposes and exercise the powers given and granted by this title.

§ 1856. Acquisition of real property. 1. Upon determination by the authority that any real property is necessary for its corporate purposes, the commissioner shall, if so requested by the authority, acquire the same in the name of the state by dedication, by agreement, by condemnation pursuant to the condemnation law, or by appropriation in the manner provided by section thirty of the highway law, and payment therefor shall be made by the authority from the proceeds of sale of its bonds, notes or other obligations, or from other available moneys therefor. The authority shall hold such property in the name of the state and shall have the right to possess and use for its corporate purposes, so long as its corporate existence shall continue, all such real property and rights in real property so acquired.

2. At any time after this title shall become effective, the authority may, by resolution, assume jurisdiction over and hold in the name of the state all or any part of the real property acquired and held in the name of the state by the state office of atomic development. Upon the effective date of such resolution, the authority shall hold any such real property in the name of the state and shall have the right to possess and use for its corporate purposes, so long as its corporate existence shall continue, any such real property.

§ 1857. Officers and employees; transfer, promotion and seniority. 1. Officers and employees of state departments and agencies may be

transferred to the authority and officers and employees of the authority may be transferred to state departments and agencies without examination and without loss of any civil service status or rights. No such transfer may, however, be made except with the approval of the head of the state department or division involved and the director of the budget and the chairman of the authority and in compliance with the rules and regulations of the state civil service commission.

2. Promotions from positions in state departments and agencies to positions in the authority, and vice versa, may be made from interdepartmental promotion lists resulting from promotion examinations in which both employees of the authority and employees of the state are eligible to participate.

3. In computing seniority for purposes of promotion or for the purposes of suspension or demotion upon the abolition of positions in the service of the authority or in the service of the state, in the case of an employee of the authority a period of prior employment in the service of the state shall be counted in the same manner as though such period of employment had been in the service of the authority, and in the case of an employee of the state a period of prior employment in the service of the authority shall be counted in the same manner as though such period of employment had been in the service of the state. For the purposes of the establishment and certification of preferred lists, employees suspended from the authority shall be eligible for reinstatement in the service of the state, and employees suspended from the service of the state shall be eligible for reinstatement in the service of the authority, in the same manner as though the authority were a department of the state.

§ 1858. Assistance by state officers, departments, boards, divisions and commissions. At the request of the authority, engineering and legal services for such authority shall be performed by the department of transportation and the department of law, respectively, and all other state agencies shall upon request by the authority render services within their respective functions.

§ 1859. Deposit, investment and accounting of moneys of the authority.

1. All moneys of the authority, from whatever source derived, shall be paid to the commissioner of taxation and finance as agent of the authority, who shall not commingle such moneys with any other moneys. Such moneys shall be deposited in a separate bank account or accounts. Such bank account or accounts known as the "atomic and space development operating fund" are hereby continued and shall be known and hereby designated as the energy research and development operating fund. The moneys in such fund may be expended for payment of any and all costs and

expenditures as required for the corporate purposes of the authority; provided, until such time as the state of New York is reimbursed in full for all moneys repayable to the state by the authority, all expenditures from this fund shall be subject to the prior approval of the director of the budget of the state of New York. The moneys in such fund when made available shall be paid out on check of the commissioner of taxation and finance on requisition of the chairman of the authority or of such other person as the authority shall authorize to make such requisition. All deposits of such moneys shall, if required by the commissioner of taxation and finance or the authority, be secured by obligations of the United States or of the state of New York of a market value equal at all times to the amount of the deposit and all banks and trust companies are authorized to give such security for such deposits.

2. Notwithstanding the provisions of subdivision one of this section, the authority shall have power, subject to the approval of the commissioner of taxation and finance, to contract with the holders of any of its bonds or notes, as to the custody, collection, securing, investment and payment of any moneys of the authority, or of any moneys held in trust or otherwise for the payment of bonds or notes or in any way to secure notes or bonds, and to carry out any such contract.

Moneys held in trust or otherwise for the payment of bonds or notes or in any way to secure notes or bonds and deposits of such moneys may be secured in the same manner as moneys of the authority, and all banks and trust companies are authorized to give such security for such deposits.

3. Any moneys of the authority not required for immediate use may, at the discretion of the authority, be invested by the commissioner of taxation and finance in obligations of the state or of the United States of America, obligations the principal and interest of which are guaranteed by the state or the United States of America or certificates of deposit of banks or trust companies in this state. The authority may also allocate to one or more reserve funds such moneys or other assets of the authority as the authority may deem necessary or convenient to carry out its corporate purposes and to exercise its corporate powers and, upon direction by the authority, the commissioner of taxation and finance shall invest all or part of the moneys in any such fund in securities in which moneys of the authority not required for immediate use may be invested or in securities in which the trustee or trustees of any public retirement system or pension fund shall have the power to invest the moneys thereof pursuant to article four-a of the retirement and social security law, in each case in such securities as may be specifically designated by the authority. Each reserve fund established pursuant to this subdivision shall be deemed a separate fund as defined in and for purposes of article four-a of the retirement and social security law. All certificates of deposit in which moneys of the authority are invested pursuant to this subdivision shall, if required by the commissioner of taxation and finance or the authority, be secured

in the same manner as moneys of the authority, and all banks and trust companies are authorized to give such security for such certificates.

4. Subject to the provisions of any contract with bondholders and noteholders and to the approval of the comptroller, the authority shall prescribe a system of accounts.

§ 1860. Bonds and notes. 1. The authority shall have the power and is hereby authorized to issue at one time or in series from time to time its negotiable bonds and notes in conformity with applicable provisions of the uniform commercial code in such principal amounts as, in the opinion of the authority, shall be necessary to provide sufficient moneys for achieving the authority's corporate purposes, including the establishment of reserves to secure the bonds and notes and the payment of interest on bonds and notes.

2. The authority shall have power from time to time to renew bonds or notes or to issue renewal bonds or notes for such purpose, to issue bonds or notes to pay bonds or notes, and, whenever it deems refunding expedient, to refund any bond or note by the issuance of new bonds or notes, whether the bonds or notes to be refunded have or have not matured, and may issue bonds or notes partly to refund bonds or notes then outstanding and partly for any other corporate purpose of the authority. Bonds or notes issued for refunding purposes shall be sold and the proceeds applied to the purchase, redemption or payment of the bonds or notes to be refunded.

3. Except as may otherwise be expressly provided by the authority, every issue of bonds or notes shall be general obligations payable out of any moneys or revenues of the authority, subject only to any agreements with the holders of bonds or notes pledging any receipts or revenues.

4. The bonds and notes shall be authorized by resolution of the authority, shall bear such date or dates and mature at such time or times as such resolution shall provide, except that notes and any renewals thereof shall mature within five years from their respective dates of issuance or renewal, as the case may be, and bonds shall mature within forty years from their respective dates of issuance or renewal, as the case may be. The bonds and notes shall bear interest at such rate or rates, be in such denomination, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms of redemption as such resolution or resolutions may provide.

5. Bonds and notes shall be sold by the authority, at public or private sale, at such price or prices as the authority may determine. Bonds and notes of the authority shall not be sold by the authority at private sale unless such sale and the terms thereof have been approved

in writing by the comptroller, where such sale is not to the comptroller, or by the director of the budget, where such sale is to the comptroller.

6. In the discretion of the authority any bonds or issue of bonds or notes or issue of notes may be secured by such resolution or by a trust indenture by and between the authority and a corporate trustee which may be any trust company or bank having the powers of a trust company in the state or by a secured loan agreement or other instrument. Such resolution, trust indenture, loan agreement or other instrument may contain any usual or customary provisions, covenants or limitations for bonds or notes of similar nature which shall be a part of the contract with the holders thereof, including such provisions for protecting and enforcing the rights and remedies of bondholders and noteholders as may be reasonable and proper and not in violation of law.

7. Any resolution or resolutions authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of the contract with the holders thereof, as to:

- (a) pledging all or part of the fees, charges, gifts, grants, rents, revenues or other moneys received or to be received and leases or agreements to secure the payment of the notes or bonds or of any issue thereof subject to such agreements with bondholders as may then exist;
- (b) the rates of the fees or charges to be established, and the amounts to be raised in each year thereby and the use and disposition of the fees, charges, gifts, grants, rents, revenues or other moneys received or to be received;
- (c) the setting aside of reserves or sinking funds, and the regulation and disposition thereof;
- (d) limitations on the purpose to which the proceeds of sale of any issue of notes or bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the notes or bonds or of any issue thereof;
- (e) limitations on the issuance of additional notes or bonds; the terms upon which additional notes or bonds may be issued and secured; the refunding of outstanding or other notes or bonds;
- (f) the procedure, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;
- (g) any other matters, of like or different character, which in any way affect the security or protection of the notes or bonds.

8. It is the intention hereof that any pledge made by the authority shall be valid and binding from the time when the pledge is made, that the moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and that the lien of any such pledge shall be valid and binding as against all parties having claims of any

kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

9. Neither the members of the authority nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

10. Subject to such agreements with bondholders or noteholders as may then exist, the authority shall have power out of any funds available therefor to purchase bonds or notes at a price not exceeding (a) if the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date thereon, or (b) if the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to said date. Bonds and notes so purchased shall thereupon be cancelled.

11. The state does hereby pledge to and agree with the holders of any bonds or notes that the state will not limit or alter the rights and powers vested in the authority by this title to fulfill the terms of any contract made by the authority with such holders, or in any way impair the rights and remedies of such holders until such bonds and notes, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state, insofar as it refers to holders of any bonds or notes, in any contract with such holders.

Sec.1860-a. Reserve funds and appropriations. 1. The authority may create and establish one or more reserve funds to be known as debt service reserve funds and may pay into such reserve funds (a) any moneys appropriated and made available by the state for the purposes of such funds, (b) any proceeds of sale of bonds and notes to the extent provided in the resolution of the authority authorizing the issuance thereof, (c) any moneys directed to be transferred by the authority to such funds, and (d) any other moneys which may be made available to the authority for the purposes of such funds from any other source or sources. The moneys held in or credited to any debt service reserve fund established under this subdivision, except as hereinafter provided, shall be used solely for the payment of the principal of bonds of the authority secured by such reserve fund, as the same mature, required payments to any sinking fund established for the amortization of such bonds (hereinafter referred to as "sinking fund payments"), the purchase or redemption of such bonds of the authority, the payment of interest on such bonds of the authority or the payment of any redemption premium

required to be paid when such bonds are redeemed prior to maturity; provided, however, that moneys in any such fund shall not be withdrawn therefrom at any time in such amount as would reduce the amount of such fund to less than the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year on the bonds of the authority then outstanding and secured by such reserve fund, except for the purpose of paying principal and interest on the bonds of the authority secured by such reserve fund maturing and becoming due and sinking fund payments for the payment of which other moneys of the authority are not available. Any income or interest earned by, or increment to, any such debt service reserve fund due to the investment thereof may be transferred to any other fund or account of the authority to the extent it does not reduce the amount of such debt service reserve fund below the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year on all bonds of the authority then outstanding and secured by such reserve fund. In computing the amount of any debt service reserve fund for the purposes of this section, securities in which all or a portion of such reserve fund are invested shall be valued at par or, if purchased at less than par, at their cost to the authority.

2. The authority shall not issue bonds at any time if the maximum amount of principal and interest maturing and becoming due in a succeeding calendar year on the bonds outstanding and then to be issued and secured by a debt service reserve fund will exceed the amount of such reserve fund at the time of issuance, unless the authority, at the time of issuance of such bonds, shall deposit in such reserve fund from the proceeds of the bonds so to be issued, or otherwise, an amount which together with the amount then in such reserve fund, will be not less than the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year on the bonds then to be issued and on all other bonds of the authority then outstanding and secured by such reserve fund.

3. To assure the continued operation and solvency of the authority for the carrying out of the public purposes of this act provision is made in subdivision one of this section for the accumulation in each debt service reserve fund of an amount equal to the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year on all bonds of the authority then outstanding and secured by such reserve fund. In order further to assure the maintenance of such debt service reserve funds, there shall be annually apportioned and paid to the authority for deposit in each debt service reserve fund such sum, if any, as shall be certified by the chairman of the authority to the governor and state director of the budget as necessary to restore such reserve fund to an amount equal to the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year on the bonds of the authority then outstanding and secured by such reserve

fund. The chairman of the authority shall annually, on or before December first, make and deliver to the governor and state director of the budget his certificate stating the sum, if any, required to restore each such debt service reserve fund to the amount aforesaid, and the sum or sums so certified, if any, shall be apportioned and paid to the authority during the then current state fiscal year. The principal amount of bonds secured by a debt service reserve fund or funds to which state funds are apportionable pursuant to this subdivision shall be limited to the total amount of bonds and notes outstanding on the effective date of this act, plus the total amount of bonds and notes contracted after the effective date of this act to finance projects in progress on the effective date of this act as determined by the New York state public authorities control board created pursuant to section fifty of this chapter whose affirmative determination shall be conclusive as to all matters of law and fact solely for the purposes of the limitations contained in this subdivision, but in no event shall the total amount of bonds so secured by such a debt service reserve fund or funds exceed nine million six hundred sixty thousand dollars, excluding bonds issued to refund such outstanding bonds until the date of redemption of such outstanding bonds. As outstanding bonds so secured are paid, the amount so secured shall be reduced accordingly but the redemption of such outstanding bonds from the proceeds of refunding bonds shall not reduce the amount so secured.

4. All amounts paid over to the authority by the state pursuant to the provisions of this section shall constitute and be accounted for as advances by the state to the authority and, subject only to the rights of the holders of any bonds or notes of the authority theretofore or thereafter issued, shall be repaid to the state from all available operating revenues of the authority in excess of debt service reserve fund requirements and operating expenses.

5. As used in this section, (a) the term "operating expenses" shall mean ordinary expenditures for operation and administration of the authority, including maintenance, repair and replacement of authority property; and (b) the term "available operating revenues" shall mean all amounts received on account of rentals and fees charged by the authority, if any, and income or interest earned or added to funds of the authority due to the investment thereof, and not required under the terms or provisions of any covenant or agreement with holders of any bonds or notes of the authority to be applied to any purposes other than payment of operating expenses of the authority.

§ 1861. Exemption from taxation of the property and income of the authority. The property of the authority and its income and operations shall be exempt from taxation.

§ 1862. Exemption from taxation of bonds and notes. The state covenants with the purchasers and with all subsequent holders and transferees of bonds and notes, in consideration of the acceptance of and payment for the bonds and notes, that the bonds and notes and the income therefrom, and all moneys, funds and revenues pledged to pay or secure the payment of such bonds and notes shall at all times be free from taxation, except for estate and gift taxes and taxes on transfers.

§ 1863. Bonds and notes legal investments for fiduciaries. The bonds and notes are hereby made securities in which all public officers and bodies of the state and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, savings associations, including savings and loan associations and building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or who may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. Notwithstanding any other provisions of law, the bonds and notes of the authority are also hereby made securities which may be deposited with and may be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized.

§ 1864. Right of state to require redemption of bonds. Notwithstanding and in addition to any provisions for the redemption of bonds which may be contained in any contract with the holders of the bonds, the state may, upon furnishing sufficient funds therefor, require the authority to redeem, prior to maturity, as a whole, any issue of bonds on any interest payment date not less than twenty years after the date of the bonds of such issue at one hundred five per cent of their face value and accrued interest or at such lesser redemption price as may be provided in the bonds in case of the redemption thereof as a whole on the redemption date. Notice of such redemption shall be published in at least two newspapers published and circulating respectively in the cities of Albany and New York at least twice, the first publication to be at least thirty days before the date of redemption.

§ 1865. Rights and remedies of bondholders and noteholders. The

holders of bonds and notes shall have the following rights and remedies, subject to the terms of the resolution authorizing such bonds and notes or any trust indenture, secured loan agreement or other instrument related thereto:

1. In the event that the authority shall default in the payment of principal of or interest on any issue of bonds or notes after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the authority shall fail or refuse to comply with the provisions of this title, or shall default in any contract made with the holders of any issue of bonds or notes, the holders of twenty-five per centum in aggregate principal amount of the bonds or notes of such issue then outstanding, by instrument or instruments filed in the office of the clerk in the county of Albany and approved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds or notes for the purposes herein provided.

2. Such trustee may, and upon written request of the holders of twenty-five per centum in principal amount of such bonds or notes then outstanding shall, in his or its own name

(a) by suit, action or special proceeding, enforce all rights of the bondholders or noteholders, including the right to require the authority to collect fees, rentals and charges adequate to carry out any agreements with the holders of such bonds or notes and to perform its duties under this title;

(b) bring suit upon such bonds or notes;

(c) by action or suit in equity, require the authority to account as if it were the trustee of an express trust for the holders of such bonds or notes;

(d) by action or suit in equity, enjoin any act or things which may be unlawful or in violation of the rights of the holders of such bonds or notes;

(e) declare all such bonds or notes due and payable, and if all defaults shall be made good then with the consent of the holders of twenty-five per centum of the principal amount of such bonds or notes then outstanding, to annul such declaration and its consequences.

3. Such trustee, whether or not the issuance of bonds or notes represented by such trustee had been declared due and payable, shall be entitled as of right to the appointment of a receiver of any property of the authority, the fees, rentals, charges or other revenues of which are pledged for the security of the bonds or notes of such issue and such receiver may enter and take possession of such property, or any part or parts thereof and operate and maintain the same and receive all fees, charges, rentals and other revenues thereafter arising therefrom and exercise such other powers of the authority as the court may deem advisable and perform the public duties and carry out the agreements and obligations of the authority under the direction of the court. In any

suit, action or proceeding by the trustee the fees, counsel fees and expenses of the trustee and of the receiver, if any, shall constitute taxable disbursements and all costs and disbursements allowed by the court shall be a first charge on any fees, charges, rentals and other revenues derived from such properties.

4. Such trustee shall in addition to the foregoing have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

5. The supreme court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of such bondholders or noteholders. The venue of any such suit, action or proceeding shall be laid in the county of Albany.

6. Before declaring the principal of bonds or notes due and payable, the trustee shall first give thirty days' notice in writing to the governor, to the authority, to the comptroller and to the attorney-general of the state.

§ 1866. State not liable on bonds and notes. The bonds and notes shall not be a debt of the state of New York nor shall the state be liable thereon and such bonds and notes shall contain on the face thereof a statement to that effect.

§ 1867. Annual reports. 1. For the purpose of furnishing the state with systematic information regarding the status and the activities of the authority, the authority shall submit to the governor, the chairman of the senate finance committee, the chairman 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 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 the comptroller and including but not limited to a breakdown of operating expenditures and revenues by facility, by maintenance and by personnel; a breakdown of capital expenditures, including an analysis of all projects begun, completed or in progress in that fiscal year; (3) an explanation of depreciation, policies, reserve funds and investments; (4) its assets and liabilities at the end of such fiscal year including the status of reserve, depreciation, special or other funds and including the receipts to and payments from these funds, and the status of funds received from federal and state governments; and (5) 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.

2. The authority, so long as it is not subject to the civil service law, shall within ninety days after the end of its fiscal year submit to the governor, the chairman of the senate finance committee and the chairman of the assembly ways and means committee a report on its personnel policies and practices with regard to recruitment, selection, promotion, classification, compensation, transfer, separation, employee relations and services and equal opportunity programs.

3. The comptroller shall be charged with seeing that the reports mandated in subdivision one are filed on time and that they are sufficiently comprehensive. The comptroller shall report any deficiencies to the governor and to the legislative chairmen named in subdivision two of this section.

4. The authority shall submit annually to the governor, for his approval, and to the budget director, the state comptroller and the head of any executive agency having energy related responsibilities, chairman of the senate finance committee, and chairman of the assembly ways and means committee, its proposed operating budget for the next ensuing fiscal year and the operating budget for the present fiscal year.

5. The budget shall be submitted in a form and on the date specified by the budget director, including, but not limited to, information on rates, contracts, revenue and sources of revenue.

6. The comptroller shall each year certify to the budget director, the governor and the legislative chairmen named in subdivision two of this section specific amounts for which the authority is obligated to the state.

§ 1867-a. Federal insurance or guaranty; taxable bond option. (a) The authority is authorized to obtain from any department or agency of the United States of America or non-governmental insurer any insurance or guaranty, to the extent now or hereafter available, as to, or of, or for the payment or repayment of interest or principal, or both, or any part thereof, on any bonds or notes issued by the authority, or on any municipal obligations of governmental units or cooperatives purchased or held by the authority; and to enter into any agreement or contract with respect to any such insurance or guaranty, except to the extent that the same would in any way impair or interfere with the ability of the authority to perform and fulfill the terms of any agreement made with the holders of the bonds or notes of the authority.

(b) The authority may covenant and consent that the interest on certain of its bonds shall be includible, under the Internal Revenue Code of 1954 or any subsequent corresponding internal revenue law of the United States, in the gross income of the holders of the bonds to the same extent and in the same manner that the interest on bills, bonds, notes or other obligations of the United States is includible in the

gross income of the holders thereof under said Internal Revenue Code or any such subsequent law.

§ 1868. Inconsistent provisions of other acts. Insofar as the provisions of this title are inconsistent with the provisions of any other act, general or special, the provisions of this title shall be controlling, provided, however, nothing contained in any provision of this title shall be construed to relieve the authority of the obligation on its part to comply with the provisions of article nine of the public authorities law in force on the effective date of this title, including the obligation to submit an annual report as specified therein.

§ 1868-a. Actions. Except in an action for wrongful death, an action against the authority founded on tort shall not be commenced more than one year and ninety days after the cause of action therefor shall have accrued, nor unless a notice of claim shall have been served on the authority within the time limited by, and in compliance with all the requirements of section fifty-e of the general municipal law. 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.

§ 1869. Termination of the authority. The authority and its corporate existence shall continue until terminated by law, provided, however, that no such law shall take effect so long as the authority shall have bonds, notes or other obligations outstanding. Upon termination of the existence of the authority all its rights, property, assets and funds shall pass to and be vested in the state. For the purposes of this section, any appropriation or advance made to the authority by the state, which has not been repaid, shall not be deemed to be an outstanding obligation of the authority.

§ 1870. Title not affected if in part unconstitutional or ineffective. If any subtitle, section, subdivision, paragraph, sentence, clause or provision of this title shall be unconstitutional or be ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective, it shall be valid or effective and no other subtitle, section, subdivision, paragraph, sentence, clause or provision shall on account thereof be deemed invalid or ineffective.

* § 1871. Public service law not applicable to authority. Except to the extent articles seven and eight of the public service law apply to

the siting and operation of a major utility transmission or major steam electric generating facility, the authority shall not be subject to the provisions of the public service law or to regulation by or the jurisdiction of the department of public service or the public service commission by reason of any contract, agreement or arrangement entered into by the authority with any power company, any water distribution company or agency or the power authority of the state of New York, or more than one of the above, or by reason of any action taken thereunder by the authority.

* NB Expired January 1, 1979 applicable until such date