STATE OF NEW YORK

7286

2017-2018 Regular Sessions

IN ASSEMBLY

April 21, 2017

Introduced by M. of A. DINOWITZ, ROSENTHAL, GLICK, ORTIZ, JOYNER, MOYA, DICKENS -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law and the New York city charter, in relation to the creation of the New York city parks construction authority

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 8 of the public authorities law is amended by adding a new title 7 to read as follows:

TITLE 7

THE NEW YORK CITY PARKS CONSTRUCTION AUTHORITY ACT

Section 1760. Short title.
1761. Definitions.
1762. New York city parks construction authority.
1763. Powers and duties of the authority.
1764. Transfer of property.
1765. Exemption from land use review procedures and other requirements.
1766. Compliance with codes.
1767. Contracts of the authority.
1768. Funding of the authority.
1769. Civil service.
1770. Retirement of employees.
1771. Collective negotiation.
1772. Use of outside design, drafting or inspection services.
1773. Deposit and investment of moneys of the authority.
1774. Exemption of the authority.
1775. Equal employment opportunity program and minority and women-owned business enterprise program.
1776. Claims and actions against the authority.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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1777. Limited liability.
1778. Audit, annual and quarterly reports.
1779. Effect of inconsistent provisions.
1780. Investigations.

§ 1760. Short title. This title shall be known and may be cited as the "New York city parks construction authority act".

§ 1761. Definitions. As used or referred to in this title, unless a different meaning clearly appears from the context:

1. "Authority" shall mean the New York city parks construction authority.

2. "Board" shall mean the board of trustees of the New York city parks construction authority.

3. "Council" shall mean the council of the city of New York.

4. "Commissioner" shall mean the commissioner of the department of parks and recreation in the city of New York.

5. "City" shall mean the city of New York.

6. "Comptroller" shall mean the comptroller of the city of New York.

7. "Department" shall mean the New York city department of parks and recreation.

8. "Director of management and budget" shall mean the director of management and budget of the city of New York.

9. "Park facilities" shall mean the facilities and structures set forth in section five hundred thirty-three of the New York city charter.

10. "Mayor" shall mean the mayor of the city of New York.

§ 1762. New York city parks construction authority. 1. There is hereby established a public benefit corporation to be known as the "New York city parks construction authority".

2. The authority shall be governed by and its powers shall be exercised by a board of trustees consisting of five members. The members shall be the commissioner and four other members, three to be appointed by the mayor, and one to be appointed by the speaker of the New York city council. The commissioner shall serve as the chairperson of the board of trustees. No officer or employee of the city or state shall be one of the appointed members of the board. The appointed members shall serve at the pleasure of their respective appointing authority.

3. Each appointed member shall continue in office until a successor has been appointed and qualifies. In the event a vacancy occurs in the office of an appointed member, the vacancy shall be filled in the same manner as was the original appointment of the trustee whose office became vacant.

4. Appointed members may engage in private employment, or in a profession or business; provided, however, that notwithstanding any otherwise applicable provision of general law, the members shall be subject to the limitations contained in sections twenty-six hundred three, twenty-six hundred four, twenty-six hundred five, and twenty-six hundred six of the New York city charter. The authority shall, for the purposes of such sections be an "agency" and such trustees shall be "public servants" for the purposes of such sections. In addition, such trustees shall be subject to the provisions of section eleven hundred sixteen of such charter and shall for the purposes of such section be "officers of the city". Notwithstanding any otherwise applicable provision of general law, employees of the authority shall be subject to such provisions of such charter and shall be deemed to be officers and employees of the city of New York for purposes of the financial disclosure requirements of section 12-110 of the administrative code of such city.

5. The board shall provide for the holding of regular meetings and such special meetings at the call of the chairperson, as may be necessary. A majority of the whole number of trustees shall constitute a quorum for the transaction of business. The powers of the board shall be vested in and exercised by a majority of the whole number of the members thereof.

6. Trustees shall receive no compensation for their services, but shall be reimbursed for the actual and necessary expenses incurred by them in the performance of their official duties as trustees of the authority.

7. The mayor shall appoint as president of the authority an individual who has extensive executive-level construction experience. The president, who shall not be a member of the board, shall be the chief executive officer of the authority and shall be responsible for the discharge of the executive and administrative functions and powers of the authority. The president shall serve at the pleasure of the board.

8. The authority shall continue in its corporate existence until terminated by law. Upon termination of the existence of the authority, all of the property interests of the authority shall pass to and vest in the city and the city shall assume any outstanding contractual duties or obligations of the authority, except as otherwise may be specified by law.

§ 1763. Powers and duties of the authority. The authority shall have the following powers and duties:

1. To sue and be sued;

2. To have a seal or alter the same at pleasure;

3. To make and alter by-laws for the organization and the management and regulation of its affairs;

4. To appoint officers and employees, fix their compensation and require background investigations, including but not limited to the criminal history of all applicants for employment to determine the suitability of such applicants for employment. Such investigation shall include but not be limited to the taking of fingerprints of such officers and employees as a prerequisite for employment; provided, however, that every set of fingerprints taken pursuant to this subdivision shall be promptly submitted to the division of criminal justice services where it shall be appropriately processed and forwarded to the federal bureau of investigation, at a rate required by such agencies for state and national criminal history record checks;

5. To design, construct, reconstruct, improve, rehabilitate, maintain, furnish, repair, equip and otherwise provide for park and recreation facilities, pursuant to agreements with the department;

6. To acquire real and personal property, or any interest therein, by any method, including but not limited to purchase or condemnation, for the purpose of constructing, reconstructing, improving, rehabilitating, maintaining, repairing, furnishing, equipping or otherwise providing for park and recreation facilities for the department; provided, however, that the authority shall use such condemnation power only if the authority is unable to purchase property by negotiation or bidding and provided further that, except to the extent permitted by subdivision two of section seventeen hundred sixty-four of this title, the authority may not condemn property dedicated to use, used or mapped as a city street or any other property owned by, or subject to any interest therein, of the city of New York;

7. To make and execute contracts and all other instruments necessary or convenient for the exercise of its functions, powers and duties,

provided that the authority may not unless otherwise specifically authorized by law issue negotiable bonds or notes;

8. To engage the services of private consultants on a contract basis for rendering professional and technical assistance and advice;

9. To enter into agreements with the department pursuant to which the authority will be responsible for the acquisition, design, construction, reconstruction, improvement, rehabilitation, maintaining, repairing, furnishing, equipping of and otherwise providing for park and recreation facilities for the department, provided, however, that any agreement under which the authority shall engage in maintenance shall be limited to maintenance that is attendant to the authority's implementation of a five-year facilities capital plan.

10. Notwithstanding the provisions of section two thousand five hundred four of the insurance law or any other law, to procure insurance on behalf of itself and others against any loss in connection with its activities, properties and other assets, in such amounts and from such insurers as it deems desirable; provided that the authority may enter into agreements with the city, acting by the mayor alone, providing for indemnification by the city of the authority against tort and contract judgments and claims, which agreements may contain provisions requiring legal representation of the authority by the corporation counsel of the city and specifying any insurance to be carried by the authority, which provisions shall supersede any agreements with the department on such subject;

11. Upon completion of the design, construction, reconstruction, improvement, rehabilitation, maintaining, repairing, furnishing, equipping of or otherwise providing for park and recreation facilities, to convey title to any such facilities to the city for use as park and recreation facilities by the department;

12. To dispose of personal property and, with the consent of the city, acting by the mayor and the council, to dispose of real property, or any interest therein, held by the authority and not required for park or recreation purposes of the department, by sale, lease, sublease or otherwise, provided that such disposition is pursuant to the implementation of a five-year park facilities capital plan;

13. To enter into agreements with the city's department of city planning to render any services the authority may request, including but not limited to professional and technical assistance by planning experts, engineers, architects and any other staff as may be necessary, and the use of the premises, personnel, equipment, access to relevant data and personal property of the department of city planning;

14. To enter into agreements with the department to render services, including but not limited to the use of the premises, personnel and personal property of the department, and to provide for reimbursement to the department from the authority for any expenses incurred by the department in carrying out the terms of these agreements;

15. To enter into agreements with the department pursuant to which the department may make available to the authority the services of employees of the department who are contemplated to be transferred to the authority pursuant to a plan for such transfers for the purpose of rendering assistance in establishing the operations of the authority; provided, however, that such employees shall no longer be available to the authority pursuant to the terms of this subdivision beyond one year following the effective date of this title;

16. To apply for or accept any gifts, grants or loans of funds or property or financial or other aid in any form from the federal govern-

ment or any agency or instrumentality thereof, from the state or any agency or instrumentality thereof, from the city or any agency or instrumentality thereof or from any other source, for any or all of the purposes specified in this title, and it may comply, subject to the provisions of this title, with the terms and conditions thereof; and

17. To do any and all things necessary or convenient to carry out and exercise the powers given and granted by this section.

§ 1764. Transfer of property. 1. The department and the city, acting by the mayor alone or by resolution of the council, may convey or transfer to the authority, with or without consideration and without any further authorization, any real, personal or mixed property (including inalienable property of the city), or any interest therein, in order to assist the authority in implementing a five-year facilities capital plan.

2. In the event the authority wishes to obtain city property for use as a park or recreation facility pursuant to an approved five-year park facilities capital plan, the authority shall request such property in writing and shall submit such request directly to the mayor. The mayor shall have thirty days to respond to such request. If the request is denied, the mayor shall set forth in writing the reasons for such denial, including whether the city intends to use such property for other public uses. Such response shall be made available to the public upon request. If the mayor fails to respond to such request, the authority may, at the expiration of the thirty-day period, condemn such property pursuant to its powers under subdivision six of section seventeen hundred sixty-three of this title.

§ 1765. Exemption from land use review procedures and other requirements. 1. Except for the provisions of article eight of the environmental conservation law and article fourteen of the parks, recreation and historic preservation law, neither (a) the establishment or amendment of a park facilities capital plan and actions relating to the financing thereof, nor (b) the establishment or revision of a park facilities master plan and actions relating to the financing thereof, nor (c) any conveyance or other grant of property or of any interest therein by the city, the department or any other person, firm or organization to the authority or to the department pursuant to a park facilities capital plan, nor (d) the design, construction, reconstruction, improvement, rehabilitation, maintaining, furnishing, repairing, equipping or use of park facilities by the authority, including any contracts, approvals, consents, agreements, permits or authorizations necessary to accomplish the same, which are pursuant to a park facilities capital plan, nor (e) the reconveyance or transfer of property to the department or to the city by the authority or any disposition of property pursuant to a park facilities capital plan, shall be subject to the provisions of any general, special or local law, city charter, administrative code, ordinance or resolution governing uniform land use review procedures, any other land use planning review and approvals, historic preservation procedures, architectural reviews, franchise approvals and other state or local review and approval procedures governing the use of land and the improvements thereon within the city. Capital projects for park facilities to be undertaken by the authority shall not be subject to the provisions of the charter of the city relating to site selection, land use review procedures, art commission review procedures, general standards and cost limits, project scope and design procedures, or contract registration and vouchering procedures.

2. The authority shall be deemed the lead agency for purposes of the implementation of the environmental review procedures prescribed by article eight of the environmental conservation law and the rules and regulations promulgated by the department of environmental conservation pursuant thereto.

3. The authority shall be subject to zoning regulations to the same extent that the city board is subject to such regulations, if at all.

§ 1766. Compliance with codes. The authority shall, in the design, construction, reconstruction, improvement, rehabilitation, maintenance, repair, furnishing, equipping of or otherwise providing for park facilities, comply with the requirements of the city building code, fire code and electrical code.

§ 1767. Contracts of the authority. 1. a. All contracts for the construction, reconstruction, improvement, rehabilitation, maintenance, repair, furnishing, equipping of or otherwise providing for park facilities for the department may be awarded in accordance with the provisions of this section, notwithstanding the provisions of section eight of the public buildings law, section one hundred three of the general municipal law, section one hundred thirty-five of the state finance law, section seven of the New York state financial emergency act for the city of New York or of any other provision of general, special or local law, charter or administrative code.

b. The authority shall be subject to the provisions of section one hundred one of the general municipal law.

2. a. Except as otherwise provided in this section, all purchase contracts for supplies, materials or equipment involving an estimated expenditure in excess of ten thousand dollars and all contracts for public work involving an estimated expenditure in excess of fifty thousand dollars shall be awarded by the authority to the lowest responsible bidder after obtaining sealed bids in the manner hereinafter set forth. For purposes hereof, contracts for public work shall exclude contracts for personal, engineering and architectural, or professional services.

b. The authority may reject all bids and obtain new bids in the manner provided by this section when it deems it in the public interest to do so or, in cases where two or more responsible bidders submit identical bids which are the lowest bids, award the contract to any of such bidders or obtain new bids from such bidders. Nothing herein shall obligate the authority to seek new bids after the rejection of bids or after cancellation of an invitation to bid. Nothing in this section shall prohibit the evaluation of bids on the basis of costs or savings including life cycle costs of the item to be purchased, discounts, and inspection services so long as the invitation to bid reasonably sets forth the criteria to be used in evaluating such costs or savings. Life cycle costs may include but shall not be limited to costs or savings associated with installation, energy use, maintenance, operation and salvage or disposal.

3. a. Notwithstanding the provisions of paragraph a of subdivision two of this section, the authority shall establish guidelines governing the qualifications of bidders entering into contracts for the construction, reconstruction, improvement, rehabilitation, maintenance, repair, furnishing, equipping of or otherwise providing for park facilities for the department. The bidding may be restricted to those who have qualified prior to the receipt of bids according to standards fixed by the authority; provided, however, that the award of contracts shall, to the extent not inconsistent with this paragraph, be in accordance with paragraph b of subdivision two of this section.

b. In determining whether a prospective bidder qualifies for inclusion on a list of pre-qualified bidders, the authority shall consider (1) the experience and past performance of the prospective bidder; (2) the prospective bidder's ability to undertake work; and (3) the financial capability, responsibility and reliability of prospective bidders. The authority may also consider such other factors as it deems appropriate.

c. The authority shall, not less than twice each year, publish, in a newspaper of general circulation in the city of New York, an advertisement requesting prospective bidders to submit qualification statements. Lists of pre-qualified bidders shall be reviewed and updated not less than annually by the authority. The authority shall delete from the list of pre-qualified bidders any bidder who has failed to perform adequately or satisfactorily for the authority, the department or any other city or state agency or authority.

d. Lists of pre-qualified bidders may be established on a project-specific basis; provided, however, that any such list shall have no less than five bidders.

4. a. Advertisement for bids, when required by this section, shall be published at least once in a newspaper of general circulation in the city of New York. Publication in such a newspaper shall not be required (i) if bids for contracts for supplies, materials or equipment are of a type regularly purchased by the authority and are to be solicited from a list of potential suppliers, if such list is or has been developed consistent with the provisions of subdivision six of this section or (ii) if bids are to be solicited from a list of pre-qualified bidders pursuant to the provisions of paragraph d of subdivision three of this section. Any such advertisement shall contain a statement of the time and place where all bids received pursuant to such notice will be publicly opened and read. At least fourteen days shall elapse between the first publication of such advertisement or the solicitation of bids, as the case may be, and the date of opening and reading of bids.

b. The authority may designate any officer or employee to open the bids at the time and place bids are to be opened and may designate an officer to award the contract to the lowest responsible bidder. Such designee shall make a record of all bids in such form and detail as the authority shall prescribe. All bids received shall be publicly opened and read at the time and place specified in the advertisement or at the time of solicitation, or to which the opening and reading have been adjourned by the authority. All bidders shall be notified of the time and place of any such adjournment.

5. Notwithstanding the foregoing, the authority may by resolution approved by a vote of its members declare (i) that competitive bidding for non-construction contracts is impractical or inappropriate because of the existence of any of the circumstances hereinafter set forth or (ii) that competitive bidding for construction contracts is impractical or inappropriate because of the existence of the circumstances set forth in paragraph a of this subdivision. Thereafter the authority may proceed to award contracts without complying with the requirements of subdivision two or three of this section. In each case where the authority declares competitive bidding impractical or inappropriate, it shall state the reason therefor in writing and summarize any negotiations that have been conducted and shall be made available upon request. Except for contracts awarded pursuant to paragraphs a, b and c of this subdivision, the authority shall not award any contract pursuant to this subdivision earlier than thirty days from the date on which the authority declares

that competitive bidding is impractical or inappropriate. Competitive bidding may only be declared impractical or inappropriate where:

a. the existence of an emergency involving danger to life, safety or property requires immediate action and cannot await competitive bidding or the item to be purchased is essential to efficient operation or the adequate provision of service by the city board or the authority and as a consequence of unforeseen circumstance such purchase cannot await competitive bidding;

b. the authority receives no responsive bids or only a single responsive bid in response to an invitation for competitive bids;

c. the item is available through an existing contract between a vendor and (i) another public authority provided that such other authority utilized a process of competitive bidding or a process of competitive requests for proposals to award such contracts, or (ii) the department, or (iii) the state of New York, or (iv) the city of New York, provided that in any case when under this paragraph the authority determines that obtaining such item thereby would be in the public interest and sets forth the reason for such determination. The authority shall accept sole responsibility for any payment due the vendor as a result of the authority's order; or

d. the authority determines that it is in the public interest to award contracts pursuant to a process for competitive requests for proposals as hereinafter set forth. For purposes of this section, a process for competitive requests for proposals shall mean a method of soliciting proposals and awarding a contract on the basis of a formal evaluation of the characteristics, such as quality, cost, delivery schedule and financing of such proposals against stated selection criteria. Public notice of the requests for proposals shall be given in the same manner as provided in subdivision three of this section and shall include the selection criteria. In the event the authority makes a material change in the selection criteria from those previously stated in the notice, it will inform all proposers of such change and permit proposers to modify their proposals.

(i) The authority may award a contract pursuant to this paragraph only after a resolution approved by a vote of its members at a public meeting of the authority with such resolution (A) disclosing the other proposers and the substance of their proposals, (B) summarizing the negotiation process including the opportunities, if any, available to proposers to present and modify their proposals, and (C) setting forth the criteria upon which the selection was made.

(ii) Nothing in this paragraph shall require or preclude (A) negotiations with any proposers following the receipt of responses to the request for proposals or (B) the rejection of any or all proposals at any time. Upon the rejection of all proposals, the authority may solicit new proposals or bids in any manner prescribed in this section.

6. Upon the adoption of a resolution by the authority stating, for reasons of efficiency, economy, compatibility or maintenance reliability, that there is a need for standardization, the authority may establish procedures whereby particular supplies, materials or equipment are identified on a qualified products list. Such procedures shall provide for products or vendors to be added to or deleted from such list and shall include provisions for public advertisement of the manner in which such lists are compiled. The authority shall review such list no less than twice a year for the purpose of making such modifications. Contracts for particular supplies, materials or equipment identified on a qualified products list may be awarded by the authority to the lowest

responsible bidder after obtaining sealed bids in accordance with this section or without competitive sealed bids in instances when the item is available from only a single source, except that the authority may dispense with advertising provided that it mails copies of the invitation to bid to all vendors of the particular item on the qualified products list.

7. The authority shall compile a list of potential sources of supplies, materials or equipment regularly purchased. The authority shall, by resolution, set forth the procedures it has established to identify new sources and to notify such new sources of the opportunity to bid for contracts for the purchase of supplies, materials or equipment. Such procedures shall include, but not be limited to advertising in trade journals.

8. The authority shall be subject to the provisions of section twenty-eight hundred seventy-nine of this chapter in awarding contracts for personal services.

9. The board shall, by resolution, establish procedures for the fair and equitable resolution of contract disputes. Prior to the establishment of such policy, the board shall publish in appropriate publications a notice of such policy and invite comment from interested parties, including, but not limited to representatives of construction organizations. Such notice shall also state that the authority will hold a public hearing to consider the policy at a specified time and place on a date not less than ten days after such publication, and the authority shall conduct the public hearing pursuant to such notice.

10. The provisions of article eight of the labor law shall be applicable to all contracts entered into directly or indirectly by the authority.

11. The provisions of subdivision one of section one hundred six-b of the general municipal law shall apply to the authority, provided, however, that the authority may retain up to four times the value of any remaining items to be completed.

§ 1768. Funding of the authority. 1. Each year the authority shall prepare and the board shall adopt an itemized estimate of the sum of money it deems necessary from the department to cover the authority's operating expenses for the ensuing fiscal year. Such estimate shall take into account any prior year's surplus and shall be delivered to the department for review at least ten business days prior to the date for submission of the department's annual estimate and shall be included as part of such department estimate. Upon appropriation of the city's expense budget for such ensuing fiscal year, the amount of the authority's estimate shall be paid to the authority by the city in twelve equal payments, each payable on the first day of each month of the fiscal year. The authority shall not be required to present any vouchers for such payments, but shall issue quarterly reports not later than thirty days after the end of each quarter comparing actual expenditures to estimated expenditures and analyzing any significant variances. The authority shall develop procedures to ensure that it operates at all times within the amounts payable to it pursuant to this section, after taking into account funds available to the authority for such purpose from sources other than the city. Expenditures of the authority from funds paid to it by the city shall be subject to audit by the comptroller, who may recommend procedures designed to improve the authority's accounting and expenditure control expenditures. In the event the authority's cash flow projections require that funds be advanced more rapidly during a fiscal year than would occur pursuant to the payment

dates set forth in this section, the authority shall advise the city board, the director of management and budget and the comptroller of such requirement. Such officials shall, in consultation with the authority, develop a schedule of advance payments to the authority designed to cover projected cash shortfalls during a fiscal year and to provide the authority with cash balances at all times sufficient to permit prompt payment of the authority's creditors.

2. The authority shall present vouchers for payment of costs incurred for projects the detailed scope of which approval has been obtained and for activities for which no such scope approval is required to the comptroller, which vouchers shall contain the following information: the amounts to be paid; the payees; the project or purpose for which the costs were incurred; a statement that the amounts to be paid are within city capital budget appropriations available therefor; and, with respect to projects for which scope approval has been obtained, a statement that the amounts to be paid are in accordance with such approved project scope. The authority shall not be required to furnish any additional information prior to payment of a voucher pursuant to this subdivision, and the comptroller is hereby authorized and directed to take such actions as may be necessary to make such payment.

3. The authority shall not be deemed a "covered organization" as defined in the New York state financial emergency act for the city of New York.

§ 1769. Civil service. 1. a. The authority, for the purpose of administering the state civil service law, shall be deemed to be a municipal commission provided, however, that (i) the authority may elect to delegate the administration of any or all of the provisions of the civil service law, except article fourteen of such law, to the department of personnel of the city of New York with respect to titles established at the authority and which the city has also established and promulgates; (ii) the civil service commission of the city of New York shall exercise on behalf of the authority the powers and duties of review assigned under sections fifty, seventy-two, and seventy-six of the civil service law; and (iii) the New York city office of administrative trials and hearings will be designated the hearing office and shall conduct on behalf of the authority such hearings as are required by sections seventy-one, seventy-two, seventy-three, seventy-five and eighty-one of the civil service law.

b. In the event the authority elects to delegate administration of any or all of the provisions of the civil service law pursuant to paragraph a of this subdivision, the city department of personnel shall enter into a contract with such authority for the rendition of such services. The authority shall compensate the city of New York for such services only with respect to such services rendered for or on behalf of the authority. If the city of New York and the authority cannot agree on the amount of such compensation, the city comptroller shall determine the fair and reasonable value of such services and the authority shall pay such sum to the city of New York.

2. a. Any person on an eligible list for a position with the department in effect on the effective date of this title shall continue to hold such position on such list and shall be entitled to the same civil service rights.

b. The authority shall continue to use any new or existing civil service lists promulgated by the city department of personnel until such time as successor titles are established.

3. With respect to persons employed by the department on the effective date of this section, the authority and the department shall be deemed to be the same public employer only for purposes of transfer of employment under the civil service law. No civil service right of an employee of the city board employed on the effective date of this title shall be lost, impaired or affected by reason of the enactment of this section into law.

4. A tripartite panel shall be established, consisting of one person representing the authority, one person representing the appropriate public employee organization and an impartial person selected by these representatives. This panel shall hear complaints filed by such public employee organization with respect to the creation and classification of new titles and shall render non-binding written recommendations to the public employee organization and the authority prior to the public hearing required of a municipal civil service commission pursuant to section twenty of the civil service law, provided that the hearing of the tripartite panel shall be expedited so as to avoid delay.

§ 1770. Retirement of employees. Employees of the authority shall be eligible to join the New York city employees' retirement system pursuant to the usual rules of that system, provided that a new employee who upon appointment by or transfer to the authority is a member of the New York city employees retirement system may remain a member of the New York city employees retirement system if, within ninety days of the effective date of the transfer to or appointment by the authority, the employee exercises an election to do so. Furthermore, the retirement rights of employees of the department employed on the effective date of this title shall not be impaired by reason of the enactment of this title into law.

§ 1771. Collective negotiation. 1. For the purpose of article fourteen of the civil service law, the authority shall be deemed to be the public employer and as such shall negotiate with and enter into written agreements with employee organizations representing the staff of the authority that have been certified or recognized under such article. In carrying on such negotiations, the authority shall consult with and seek assistance from the office of labor relations and collective bargaining of the city board and the New York city office of municipal labor relations. The state public employment relations board shall have exclusive jurisdiction for the purpose of administering the provisions of such article and the provisions of section two hundred twelve of such article shall not be applicable to any such negotiations.

2. Employees transferred from the department to the authority shall be included in an appropriate employer-employee negotiating unit pursuant to article fourteen of the civil service law except for those employees who are designated managerial or confidential. With respect to such employees, the existing public employee organization recognized or certified to represent the employees of the existing negotiating unit shall be recognized as the representative for the negotiating unit of the authority.

3. Future alterations of the negotiating unit shall be made pursuant to article fourteen of the civil service law.

4. a. The authority shall consult with the appropriate public employee organization on the establishment of, and bargain all terms and conditions of, any new titles it establishes which have a community of interest with titles already represented by the public employee organization which presently has representation rights for those titles at the department or at the city of New York.

b. Any such titles for which terms and conditions are bargained pursuant to paragraph a of this subdivision shall be deemed to be successor titles within the meaning of applicable law and, so long as the responsibilities of employees in these titles are reasonably related to the responsibilities of employees currently represented by a public employee organization, shall be accreted to the appropriate bargaining certificates for which such public employee organization shall be voluntarily recognized as the bargaining agent under procedures acceptable to the state public employment relations board.

§ 1772. Use of outside design, drafting or inspection services. 1. All design, drafting or inspection services necessary in connection with the approved park facilities capital plan shall be performed by appropriate employees of the authority, except as otherwise provided in this section.

2. a. The authority will undertake design, drafting and inspection services with employees of the authority so that not less than forty percent of such work performed will be so undertaken.

b. Notwithstanding the provisions of paragraph a of this subdivision, design, drafting and inspection services may be performed by persons other than employees of the authority in any given fiscal year when the amount of services allowed to be performed by persons other than employees of the authority pursuant to the provisions of this subdivision have been exhausted for that fiscal year, and when:

(1) Performance by persons other than employees of the authority is necessary to avoid a conflict of interest, as defined in regulations promulgated by the authority, and is a direct consequence of an accident or other unforeseen circumstance; or

(2) (A) Current employees of the authority are otherwise engaged and cannot be reassigned to perform the services; (B) new employees cannot be hired within a reasonable time to perform such services; and (C) such services are needed in connection with work undertaken in response to an emergency. For purposes of this subparagraph, the term "emergency" shall mean a situation involving danger to life, safety or property which requires immediate action, is essential to efficient operation or the adequate provision of service by the department or the authority, and is a direct consequence of an accident or other unforeseen circumstance.

3. a. Design, drafting or inspection services above the minimum percentages reserved for employees of the authority pursuant to paragraph a of subdivision two of this section may be performed by other than appropriate employees of the authority if to do so is (i) cost effective, (ii) required to obtain special expertise not available through the appropriate employees of the authority, (iii) required to perform a service of short duration, (iv) required to respond to an emergency, or (v) required to avoid a conflict of interest.

b. Prior to executing a contract for design, drafting or inspection services pursuant to paragraph a of this subdivision, the authority shall prepare a specific statement which sets forth the objective data supporting the reasons why the proposed contract meets one or more of the requirements set forth in such paragraph. Where use of the contract is stated to be in compliance with subparagraph (i) of such paragraph, such statement shall include certification that the contract will not cause the displacement of authority employees.

c. (1) Prior to the scheduled award of the contract proposed to be awarded pursuant to paragraph a of this subdivision, the authority shall provide all employee organizations that represent authority employees who would otherwise perform such work with copies of the statement

rendered pursuant to paragraph b of this subdivision and the proposed contract so that each such employee organization shall have at least fifteen days to object to the proposed contract. Any employee organization which provides a timely written notice of objection and the reasons therefor shall, unless the authority agrees in writing to withdraw the proposed contract, be permitted to be heard by the authority's trustees prior to the award of the contract.

(2) Notwithstanding the provisions contained within subparagraph one of this paragraph, the employee organization may be provided less than the required fifteen days to object to the proposed contract when the contract is required to respond to an emergency as defined in subparagraph two of paragraph b of subdivision two of this section; provided, however, that all other provisions of such clause shall be observed.

4. No later than ten days prior to the date set by the city charter for the holding of hearings on the mayor's annual preliminary budget statements for capital projects, the authority shall prepare a report specifying the projects from the approved park facilities plan which the authority plans to commit to during the next fiscal year. If the authority intends to contract for design, drafting or inspection services in connection with any project so specified, the report shall further specify (i) for which projects the services are needed; (ii) the type of services to be provided pursuant to contract; (iii) the estimated cost of the contract; and (iv) the reason or reasons why award of the contract is consistent with this subdivision. The report shall be filed in the authority's office and with the department, and shall be available to the public upon request. The authority shall file revisions to the report so as to provide advance notice of not less than thirty days of additional projects that the authority plans to undertake on which the authority intends to contract for design, drafting or inspection services. Such revisions shall be in accordance with the criteria of this subdivision. Such revisions shall also identify projects which the authority included in its report but which the authority does not intend to pursue in the applicable fiscal year. The authority shall file such revisions in the authority's office and with the department, and such revisions shall be available to the public upon request. Such report and revisions shall not preclude the authority from entering into contracts or undertaking projects.

5. Nothing herein shall be deemed to create a cause of action against the authority challenging the board's determination to award a contract pursuant to subdivision three of this section, except to challenge a failure by the authority to adhere to the process set forth in paragraphs b and c of subdivision three of this section.

§ 1773. Deposit and investment of moneys of the authority. 1. The authority may establish and maintain funds for the purpose of receiving and expending moneys received by the authority.

2. All moneys of the authority from whatever source derived shall be paid to the authority and shall be deposited in accounts held in the authority's name in the bank or banks in the state designated by the authority. The moneys in such accounts shall be paid out on checks of the authority upon requisition by the chairperson or such other officer or officers as the authority may authorize to make such requisitions.

3. Any moneys on deposit in the accounts of the authority not required for immediate expenditure shall be invested in obligations in which a municipality may be authorized to invest in accordance with section eleven of the general municipal law, provided, however, that such funds

shall not be invested in instruments commonly known as repurchase agreements.

4. The authority shall provide the city with records and other information regarding (i) the nature of work performed by the authority's employees so as to enable the city to determine the extent to which the cost of such services may be treated as capital costs of the city and the park facilities to which such costs pertain and (ii) the investment of funds received from the city so as to enable the city to comply with the requirements of federal tax laws and preserve the tax-exempt status of obligations issued by the city. The authority shall cooperate with the city in all respects to ensure that all investments are made in a manner that preserves the tax-exempt status of such obligations.

§ 1774. Exemption of the authority. 1. Notwithstanding any other provision of law, any real or personal property, while owned or subject to any rights of the authority, shall be exempt from all taxes, special assessments and special ad valorem levies and from the payment of any and all charges, rents or other payments to the city, other than charges for services provided by the city's water and sewer systems. In addition, any in rem actions or proceedings brought against such property by the city or any other actions or proceedings concerning any of the above brought against the authority by the city, and any such actions or proceedings shall be void and shall be subject to dismissal upon application of the authority at the sole expense of the city of New York. In no instance shall title to any such property pass to the city of New York except by deed or other appropriate document of sale, release or conveyance executed by the authority.

2. Debts of the authority shall not be considered debts of the state or debts of the city.

§ 1775. Equal employment opportunity program and minority and women-owned business enterprise program. 1. Notwithstanding any other inconsistent provision of law, sections 8-107 and 6-108.1 of the administration code of the city of New York shall apply to the activities of the authority.

2. a. The provisions of section 6-108.1 of the administrative code of the city of New York with respect to the award of contracts to locally based enterprises shall apply to contracts entered into by the authority provided, however, the authority shall exercise the powers of the mayor set forth in such section with respect to: the establishment of procedures for the certification of businesses; the approval or granting of waivers of the requirements of such section; the promulgation of rules and regulations for the purpose of implementing the provisions of such section; and the submission of annual reports concerning the administration of the program established pursuant to such section. Notwithstanding the foregoing, the limitation on gross receipts of qualified locally based enterprises set forth in clause (a) of subdivision six of paragraph a of section 6-108.1 of the administrative code of the city of New York may be raised by the authority upon a determination that a higher limitation is necessary to meet the goals of the locally based enterprise program.

b. The authority shall establish and implement reasonable procedures to secure the meaningful participation of minority and women-owned business enterprises in its procurement process.

3. The provisions of executive order fifty of the mayor of the city of New York, dated April twenty-fifth, nineteen hundred eighty, as amended, shall apply to contracts of the authority unless and until such provisions are revoked, provided, however, that with respect to such

order, or any other program concerning equal employment opportunity or affirmative action to which contracts entered into by the authority are subject, such program shall be administered by an officer of the authority designated by the authority, and no other agency shall have jurisdiction over the compliance by the authority with the requirements of any such program.

§ 1776. Claims and actions against the authority. 1. Except in an action for wrongful death, no action or proceeding shall be prosecuted or maintained against the authority, or any member, officer, agent, or employee thereof, for personal injury or damage to real or personal property alleged to have been sustained by reason of the negligence or wrongful act of the authority or of any such member, officer, agent or employee thereof, or for any other alleged tort of the authority or of such member, officer, agency or employee thereof, unless (i) it shall appear by and as an allegation in the complaint or moving papers that a notice of claim shall have been made and served upon the authority, within the time limit prescribed by and in compliance with section fifty-e of the general municipal law, and that at least thirty days have elapsed since the service of such notice and that adjustment or payment thereof has been neglected or refused, and (ii) the action or proceeding shall be commenced within one year after the happening of the event upon which the claim is based. An action against the authority for wrongful death shall be commenced in accordance with the notice of claim and time limitation provisions of title eleven of article nine of this chapter.

2. No action or proceeding for any cause whatever, other than the one for personal injury, death, property damage or tort, which shall be governed by subdivision one of this section, relating to the design, construction, reconstruction, improvement, rehabilitation, repair, furnishing or equipping of educational facilities, shall be prosecuted or maintained against the authority or any member, officer, agent, or employee thereof, unless (i) it shall appear by and as an allegation in the complaint or moving papers, that a detailed, written, verified notice of each claim upon which any part of such action or proceeding is founded was presented to the board within three months after the accrual of such claim, that at least thirty days have elapsed since such notice was so presented and that the authority or the officer or body having the power to adjust or pay said claim has neglected or refused to make an adjustment or payment thereof, and (ii) the action or proceeding shall have been commenced within one year after the happening of the event upon which the claim is based; provided, however, that nothing contained in this subdivision shall be deemed to modify or supersede any provision of law or contract specifying a shorter period of time in which to commence such action or proceeding, or to excuse compliance with any other conditions required by contract to be satisfied prior to the commencement of such action or proceeding. In the case of an action or special proceeding for monies due arising out of contract, accrual of such claim shall be deemed to have occurred as of the date payment for the amount claimed was denied.

3. The notice of each claim presented pursuant to subdivision two of this section must set forth in detail with respect to such claim; (i) the amount of the claim; (ii) a specific and detailed description of the grounds for the claim, relating the dollar amount claimed to the event purportedly giving rise to the claim and indicating how the dollar amount is arrived at; and (iii) the date of the event allegedly underlying the claim.

4. The authority shall have power to settle or adjust all claims in favor of or against the authority.

5. Whenever a notice of claim is served upon the authority alleging personal injury, it shall have the right to demand a physical examination of the claimant relative to the occurrence and extent of the injuries or damages for which claim is made, in accordance with the provisions of section fifty-h of the general municipal law.

6. The rate of interest to be paid by the authority upon any judgment for which it is liable, shall not exceed the rate of interest on judgments and accrued claims against municipal corporations as provided in the general municipal law from time to time.

§ 1777. Limited liability. Neither the members of the board nor any officers or employee of the authority acting on behalf thereof, while acting within the scope of such person's authority, shall be subject to any liability resulting from carrying out any of the powers expressly given in this title. A trustee, officer or employee of the authority shall be deemed an "employee" for the purposes of section fifty-k of the general municipal law, provided, however, that any trustee appointed by the governor or any employee of the state shall be deemed an "employee" for the purposes of section eighteen of the public officers law for any actions relating to their activities as a trustee of the authority created by this title.

§ 1778. Audit, annual and quarterly reports. 1. The authority shall, within one hundred twenty days of the end of the city's fiscal year, submit to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, the minority leader of the assembly, the chairs of the senate and assembly committees on corporations, authorities and commissions, the chairman of the senate committee on investigations, taxation, and government operations, the chairman of the assembly committee on oversight, analysis, and investigations, the mayor and the department a report on its operations during such fiscal year. An annual audit of the authority shall be conducted by an independent certified public accountant, and the authority's independently audited financial statements shall be included in this report.

2. The authority shall, on the last day of April, July, October, and January, submit to all persons set forth in subdivision one of this section a report detailing the extent of completion of all projects for construction, reconstruction, improvement, rehabilitation, maintenance, repair, furnishing, equipping of or otherwise providing for park facilities for the department, including, by project, identified shortfalls in schedule performance and providing explanation for such shortfalls. Such reports shall detail the extent of completion as existed on the last day of the month preceding each report, respectively.

§ 1779. Effect of inconsistent provisions. Insofar as the provisions of this title are inconsistent with the provisions of any other law, general, special or local or of the city charter or any local law, ordinance or resolution of the city, the provision of this title shall be controlling, provided that nothing contained in this section shall be held to supplement or otherwise expand the powers or duties of the authority otherwise set forth in this title.

§ 1780. Investigations. The department of investigation of the city of New York shall be authorized to conduct investigations relating to the authority pursuant to chapter thirty-four of the New York city charter.

§ 2. The opening paragraph of section 533 of the New York city charter, as amended by a vote of the people of the city of New York at the

general election held in November of 1989, is amended to read as follows:

Except with respect to the functions of the board of education and except as otherwise provided by **title seven of article eight of the public authorities law or any other inconsistent provision of** law, the commissioner shall have the power and it shall be his or her duty:

§ 3. Paragraphs 4, 5, 6, 7 and 8 of subdivision a of section 533 of the New York city charter, paragraphs 4, 6 and 7 as amended by a vote of the people of the city of New York at the general election held in November of 1989, paragraph 5 as added by local law number 7 of the city of New York for the year 1976, paragraph 8 as amended by a vote of the people of the city of New York at the general election held in November of 1988, are amended to read as follows:

4. to plant and maintain trees and to [~~construct,~~] erect and establish [~~seats,~~] drinking fountains, statues and works of art in any place within his or her jurisdiction[~~, and to determine when and where lamps or lighting appliances shall be placed and lighted therein and the design thereof~~];

5. to authorize and regulate the use of and the projections on and determine the line or curb [~~and the surface construction~~] of all streets and avenues lying within any park, square or public place or within a distance of three hundred fifty feet from the outer boundaries thereof;

6. to maintain buildings and structures now or hereafter erected or established in any park, square, public place or playground under his or her jurisdiction [~~and to carry out and perform existing contracts with corporations or institutions for the construction and maintenance of such buildings and structures~~];

7. to provide the necessary instruments, furniture and equipment for the several buildings and structures within his or her jurisdiction [~~and to develop and improve the same subject to the provisions of law and existing contracts~~];

8. to have the management, direction and control of all [~~real or~~] personal property granted, devised, bequeathed or conveyed to the city for the extension, improvement or ornamentation of the parks, squares or public places in the city [~~or for the establishment or maintenance, within the limits of any such park, square or public place, of playgrounds, other recreational properties and other facilities within the department's jurisdiction and~~] upon such trusts and conditions as may be prescribed by the grantors or donors thereof and accepted by the commissioner, or proposed by the commissioner and accepted by the grantors or donors thereof;

§ 4. Paragraph 1 of subdivision b of section 533 of the New York city charter, as added by local law number 7 of the city of New York for the year 1976, is amended to read as follows:

1. to plan[~~, acquire, construct, improve~~] and manage facilities for the recreation of the public;

§ 5. This act shall take effect immediately.