STATE OF NEW YORK

10941

IN ASSEMBLY

May 29, 2018

Introduced by M. of A. JENNE -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to the creation of the Massena Memorial Hospital Corporation and providing for the rights, powers, duties, and jurisdiction of such corporation

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

Section 1. Article 10-C of the public authorities law is amended by adding a new title 1-A to read as follows:

TITLE 1-A
MASSENA MEMORIAL HOSPITAL CORPORATION
Section 3350. Short title.
3351. Legislative findings and declarations.
3352. Definitions.
3353. Massena Memorial Hospital Corporation.
3354. Transfer of officers and employees; recognition and continuation of existing bargaining agents and units; layoffs; services.
3355. General powers of the corporation.
3356. Special powers of the corporation.
3357. Transfer of property; relationship with town; certain gifts, loans and guarantees by the town.
3358. Bonds or notes of the corporation.
3359. Remedies of bondholders.
3360. State and town not liable on corporation bonds.
3361. Monies of the corporation.
3362. Bonds; legal investments for fiduciaries.
3363. Agreement with state.
3364. Agreement with town.
3365. Tax exemption and tax contract by the state.
3366. Actions against corporation.
3367. Audit and annual reports.
3368. Defense and indemnification.

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

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3369. Transfer of applications, proceedings, approvals and permits.
3370. Separability.
3371. Applicability of laws.

§ 3350. Short title. This title shall be known and may be cited as the "Massena Memorial Hospital Corporation".

§ 3351. Legislative findings and declarations. The legislature hereby finds and declares as follows:

1. Currently, the Massena Memorial Hospital is a public hospital owned and operated by the town of Massena.

2. The Massena Memorial Hospital healthcare network includes a general hospital and several clinics in St. Lawrence county.

3. The Massena Memorial Hospital is a tertiary care facility for the town of Massena and St. Lawrence county.

4. The Massena Memorial Hospital is the only public hospital in the Massena area with quality pediatric and adolescent care facilities and a neurology department.

5. The needs of the residents of the state of New York and of the town of Massena can best be served by the operation of the Massena Memorial Hospital healthcare network through a public benefit corporation having the legal, financial, and managerial flexibility to take full advantage of opportunities and challenges presented by the evolving health care environment.

6. In order to accomplish the purposes recited in this section of providing health care services and health facilities for the benefit of the residents of the state of New York and the town of Massena, including persons in need of health care services without the ability to pay, as required by law, a public benefit corporation to be known as the Massena Memorial Hospital Corporation shall be created to provide such services and facilities and to otherwise carry out such purposes. The creation and operation of the Massena Memorial Hospital Corporation, as provided in this title, is in all respects for the benefit of the people of the state of New York and of the town of Massena and is a state, town, and public purpose. The exercise by such corporation of the functions, powers, and duties provided in this title constitutes the performance of an essential public and governmental function.

7. In authorizing the Massena Memorial Hospital healthcare network to be operated through a public benefit corporation, it is intended that the hospital continue as a general, municipal hospital available to the residents of the town of Massena, county of St. Lawrence, and northern New York state generally, that the health care services provided by the Massena Memorial Hospital healthcare network's hospital, clinics, and ancillary facilities by dedicated public employees will continue, and that the network's role as a leading provider of services to Medicaid patients will also continue.

§ 3352. Definitions. As used or referred to in this title, unless a different meaning clearly appears from the context:

1. "Board" means the board of directors of the corporation established by section thirty-three hundred fifty-three of this title.

2. "Bonds" means the bonds, notes, or other evidences of indebtedness issued by the corporation pursuant to this title, and the provisions of this title relating to bonds and bondholders shall apply with equal force and effect to notes and noteholders, respectively, unless the context otherwise clearly requires.

3. "Corporation" means the public benefit corporation created by section thirty-three hundred fifty-three of this title, known as the Massena Memorial Hospital Corporation.

4. "County" means the county of St. Lawrence.

5. "Health facility" means a building, structure, or unit, or any improvement to real property, including all necessary and usual attendant and related equipment, facilities, or fixtures, or any part or parts thereof, or any combination or combinations thereof, including, but not limited to, a general hospital, psychiatric hospital, ambulatory clinic or center, chronic disease hospital, nursing home, extended-care facility, dispensary, or laboratory, or any other related facility, or any combination of the foregoing, constructed, acquired, or otherwise provided by or for the use of the corporation or the town in providing medical research and health and medical services to the public.

6. "Director" means a voting director appointed to the corporation pursuant to section thirty-three hundred fifty-three of this title.

7. "Network" shall mean the Massena Memorial Hospital healthcare network.

8. "Town" shall mean the town of Massena.

§ 3353. Massena Memorial Hospital Corporation. 1. (a) There is hereby created a state board to be known as the Massena Memorial Hospital Corporation, which shall be a body corporate and politic constituting a public benefit corporation.

(b) The corporation shall be governed by fifteen voting directors, of whom eight directors shall be appointed by the governor and seven directors shall be appointed by the town supervisor of the town of Massena. The governor shall make appointments to the corporation as follows: three directors from a recommendation submitted by the town supervisor of the town of Massena; three directors from a recommendation submitted by the town council; one director, who shall be a resident of the town of Massena, from a recommendation submitted by the temporary president of the senate; and one director, who shall be a resident of the town of Massena, from a recommendation submitted by the speaker of the assembly. The town supervisor of the town of Massena shall make seven appointments to the board with the advice and consent of the town council.

The terms of the initial directors appointed by the governor shall be five years for such directors appointed upon recommendation of the temporary president of the senate and the speaker of the assembly. The terms of the initial directors appointed by the governor upon the recommendation of the town supervisor of the town of Massena shall be five years for one, four years for one, and three years for one. The terms of the initial directors appointed by the governor upon the recommendation of the town council shall be four years for two and three years for one. The terms of the initial directors appointed by the town supervisor of the town of Massena shall be one year for two of such directors, two years for three of such directors, and three years for two of such directors.

(c) Each director shall possess a high degree of experience and knowledge in relevant fields and a high degree of interest in the corporation. The appointment of any director to the corporation shall be based in part on the objective of ensuring that the corporation includes diverse and beneficial perspectives and experience, including, but not limited to, those of business management, law, finance, medical or other health professionals or both, health sector workers, and the patient or consumer perspective.

2. There shall be four non-voting representatives, who shall include the chief executive officer of the corporation appointed by the voting directors of the board, one selected by the town supervisor of the town of Massena, two selected by the town council. Such representatives shall have all of the rights and powers of the directors other than the right and power to vote, including, but not limited to, the right to equal access to information.

3. All directors and non-voting representatives shall continue to hold office until their successors are appointed and qualify. All subsequent appointments made upon the expiration of an initial term shall be for a term of five years, and all appointees shall be eligible for reappointment. Vacancies occurring otherwise than by expiration of term of office shall be filled for the unexpired terms in the manner provided for original appointment. Members of the board may be removed from office by the board for inefficiency, neglect of duty, or misconduct in office after the board has given such member a copy of the charges against him or her and an opportunity to be heard in person or by counsel in his or her defense, upon not less than ten days notice.

4. (a) The directors shall, by majority vote, select one of the fifteen directors as the chairperson of the board. The chairperson shall preside over all meetings of the board and shall have such other duties as the directors may provide.

(b) The voting directors and non-voting representatives of the corporation shall receive no compensation for their services, but shall be reimbursed for all their actual and necessary expenses incurred in connection with carrying out the purposes of this title.

(c) The powers of the corporation shall be vested in and shall be exercised by the board at a meeting duly called and held, where a quorum of eight directors is present. No action shall be taken by the corporation except pursuant to the favorable vote of at least eight directors present at the meeting at which such action is taken.

(d) The members of the board or any committee thereof may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time; participation by such means shall constitute presence in person at a meeting.

(e) Any action required or permitted to be taken by the board or any committee thereof may be taken without a meeting if all members of the board or the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the board or committee shall be filed with the minutes of the proceedings of the board or committee.

5. The voting directors shall select and shall determine the salary and benefits of the chief executive officer of the corporation. The directors shall have the authority to discharge the chief executive officer with or without cause; provided, however, that removal without cause shall not prejudice the contract rights, if any, of the chief executive officer.

6. Notwithstanding any inconsistent provision of any general, special, or local law, ordinance, resolution, or charter, no officer, member, or employee of the state or of any public corporation shall forfeit his or her office or employment by reason of his or her acceptance of appointment as a director, non-voting representative, officer, or employee of the corporation, nor shall service as such a director, non-voting representative, officer, or employee be deemed incompatible or in conflict with such office or employment; and provided further, however, that no

public officer elected to his or her office pursuant to the laws of the state or any municipality thereof may serve as a member of the governing body of the corporation during his or her term of office.

7. The corporation shall have a chief executive officer, a secretary, a treasurer, and such other officers as the board shall from time to time provide; such officers shall exercise the duties provided by the board or by this title.

8. The corporation and its corporate existence shall continue until terminated by law; provided, however, that no such termination shall take effect so long as the corporation shall have bonds or other obligations outstanding, unless adequate provision has been made for the payment or satisfaction thereof. Upon termination of the existence of the corporation, all of the rights and properties of the corporation then remaining shall pass to and vest in the town in such manner as is or may be prescribed by law.

9. Contracts for works, construction, or purchases to which the corporation is a party shall be subject to the provisions of article five-A of the general municipal law, except as provided in subdivisions ten and eleven of this section. In addition to the procedures prescribed under section one hundred four of the general municipal law for the utilization of the terms of state contracts, the corporation may utilize the terms of a federal government general services contract where the terms are to the advantage of the corporation and have been offered to the corporation by the contractor. When bids have already been received by the corporation, no purchase under a federal government general services contract shall be made, unless the purchase may be made upon the same terms, conditions, and specifications at a lower price through such contractor.

10. It is the intent of the legislature that overall cost shall in all cases be a major criterion in the selection of project developers for award of contracts pursuant to this section and that, whenever practical, such contracts shall be entered into through competitive bidding procedures, as prescribed by sections one hundred one and one hundred three of the general municipal law. It is further the intent of the legislature to acknowledge the highly complex and innovative nature of medical technology and diagnostic and treatment devices, the relative newness of a variety of devices, processes, and procedures now available, the desirability of a single point of responsibility for the development of medical treatment and diagnostic facilities, and the economic and technical utility of contracts for medical projects which include in their scope various combinations of design, construction, operation, management, or maintenance responsibility, or any combination thereof, over prolonged periods of time, and to acknowledge that, in some instances, it may be beneficial to the corporation to award a contract for a medical project on the basis of factors other than cost alone, including, but not limited to, facility design, system reliability, efficiency, safety, and compatibility with other elements of patient care. Accordingly, and notwithstanding the provisions of any general, special, or local law or charter, a contract for a medical project entered into between the corporation and any project developer pursuant to this section may be awarded pursuant to public bidding in compliance with sections one hundred one and one hundred three of the general municipal law or pursuant to the following provisions for the award of a contract based on an evaluation of proposals submitted in response to a request for proposals prepared by or for the corporation:

(a) The corporation shall require that each proposal to be submitted by a project developer include:

(i) information relating to the experience and expertise of the project developer on the basis of which said project developer purports to be qualified to carry out all work required by a proposed contract; the ability of the project developer to secure adequate financing; and proposals for project staffing, implementation of work tasks, and the carrying out of all responsibilities required by a proposed contract;

(ii) a proposal clearly identifying and specifying all elements of costs which would become charges to the corporation, in whatever form, in return for the fulfillment by the project developer for the full lifetime of a proposed contract, including, as appropriate, but not limited to, the cost of planning, design, construction, operation, management, or maintenance, or any combination thereof, of any facility, and clearly identifying and specifying all elements of revenue which would accrue to the corporation from the operation of the facility or device or from any other source; provided that the corporation may prescribe the form and content of such proposal and that, in any event, the project developer must submit sufficiently detailed information to permit a fair and equitable evaluation by the corporation of such proposal; and provided, further, that the corporation may set maximum allowable cost limits in any form in the request for proposals; and

(iii) such other information as the corporation may determine to have a material bearing on its ability to evaluate any proposal in accordance with this paragraph;

(b) Prior to the issuance of a request for proposals pursuant to this subdivision, the corporation shall publish notice of such issuance in at least one newspaper of general circulation. Concurrent with the publication of such notice, a draft request for proposals shall be filed with the county commissioner of health;

(c) Proposals received in response to such request for proposals shall be evaluated by the corporation as to net cost or, if a net revenue is projected, net revenue, and in a manner consistent with provisions set forth in the request for proposals, and may be evaluated on the basis of additional factors, including, but not limited to, the technical evaluation of the medical project, including medical facility, facility design, system reliability, energy balance, and efficiency. The evaluation of such proposals and the determination of whether or not a project developer is "responsible" may include, but shall not be limited to, consideration, in a manner consistent with provisions set forth in the request for proposals, of the record of the project developer in complying with existing labor standards and recognizing state and federally approved apprentice training programs and consideration of the willingness of the project developer to provide for meaningful participation of minority group persons and business enterprises in the conduct of the work; and

(d) The corporation may make a contract award to any responsible project developer based on a determination by the corporation that the selected proposal is most responsive to the request for proposals and may negotiate with any project developer; provided, however, that, if any award is made to any project developer whose total proposal does not provide either the lowest net cost, or, if a net revenue is projected, the greatest net revenue, of any proposal received, the corporation shall adopt a resolution which includes particularized findings relevant to factors pursuant to paragraph (c) of this subdivision indicating that

the corporation's requirements are met by award and that such action is in the public interest.

Whenever the corporation enters into a contract pursuant to this section for a medical project which involves construction, the provisions of section two hundred twenty of the labor law shall be applicable to such construction work.

11. Every contract entered into between the corporation and a project developer, pursuant to the provisions of paragraph (d) of subdivision ten of this section, for a medical project involving construction of a medical building by the project developer, shall contain provisions that such building shall be constructed through construction contracts awarded through competitive bidding in accordance with paragraphs (a) through (g) of this subdivision; that the project developer or the project developer's construction subcontractor shall furnish a bond guaranteeing prompt payment of moneys that are due to all persons furnishing labor and materials pursuant to the requirements of such construction contracts, and that a copy of such payment bond shall be kept by the corporation and shall be open to public inspection; provided, however, that the requirements of this subdivision shall not apply when the cost of such construction, exclusive of the cost of medical equipment, apparatus, and devices, is less than seventy-five thousand dollars.

(a) The project developer shall advertise for bids for such construction contracts in a daily newspaper having general circulation in the town. 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. An employee of the corporation shall be designated to open the bids at the time and place specified in the notice. All bids received shall be publicly opened and read at the time and place so specified. At least five days shall elapse between the publication of such advertisement and the date on which the bids are opened.

(b) When the entire cost of constructing such building, exclusive of any medical equipment, apparatus, or devices, exceeds seventy-five thousand dollars, the project developer shall prepare separate specifications for the following subdivisions of such work, so as to permit separate and independent bidding upon each subdivision:

(i) plumbing and gas fittings;

(ii) steam heating, hot water heating, ventilating, and air conditioning apparatus; and

(iii) electric wiring and standard illuminating fixtures.

(c) After public competitive bidding, the project developer shall award one or more separate contracts for each of the above subdivisions of such work, whenever separate specifications are required pursuant to paragraph (b) of this subdivision, and one or more contracts for the remainder of such work. The project developer may award such contracts at different times. Contracts awarded pursuant to this paragraph shall be awarded by the project developer to the lowest responsible and responsive bidder and shall be contracts of the project developer and not of the corporation, which shall have no obligation or liabilities, whatsoever, thereunder. The project developer shall have the responsibility for the supervision, coordination, and termination of such contracts, unless otherwise specified in contractual terms between the project developer and the corporation.

(d) In determining whether or not a prospective contractor is responsible and responsive, the project developer may require that prospective contractors:

(i) have adequate financial resources or the ability to obtain such resources;

(ii) be able to comply with the required or proposed delivery or performance schedule;

(iii) have a satisfactory record of performance;

(iv) have the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them;

(v) have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and

(vi) be eligible to receive an award under applicable laws and regulations and be otherwise qualified.

(e) The project developer may reject any bid of a bidder if the project developer determines the bidder to be non-responsible or the bid non-responsive to the advertisement for bids.

(f) The project developer may, in its discretion, reject all bids, may revise bid specifications, and may re-advertise for bids as provided in this subdivision for original advertisements.

(g) Only as used in this section:

(i) "project developer" means any private corporation, partnership, limited liability company, or individual, or combination thereof which has submitted a proposal in response to a request for proposals;

(ii) "construction" includes reconstruction, rehabilitation, or improvement, exclusive of the installation and assembly of any medical equipment, apparatus, or device;

(iii) "medical building" means that component of a medical project constituting appurtenant structures or facilities necessary to house or render the remaining components of the medical project operational. Medical building does not include apparatus, equipment, devices, systems, supplies, or any combination thereof; and

(iv) "medical project" means any substantial durable apparatus, equipment, device, or system, or any combination of the foregoing, including services necessary to install, erect, or assemble the foregoing, and any appurtenant structures or facilities necessary to house or render the foregoing operational, to be used for the purpose of care, treatment, or diagnosis of disease or injury or the relief of pain and suffering of sick or injured persons. Medical projects do not include ordinary supplies and equipment expended or utilized in the customary care and treatment of patients.

12. (a) For purposes of applying section eighty-seven of the public officers law to the corporation, the term "trade secrets" shall include marketing strategy or strategic marketing plans, analyses, evaluations, and pricing strategies or pricing commitments of the corporation relating to business development, including strategic alliances and contracts for managed care and other network arrangements, capitation contracts, and other similar arrangements relating to business development which, if disclosed, would be likely to injure the competitive position of the corporation.

(b) In addition to the matters listed in section one hundred five of the public officers law, the corporation may conduct an executive session for the purpose of considering marketing strategy or strategic marketing plans, analyses, evaluations, and pricing strategies or pricing commitments of the corporation relating to business development, including strategic alliances and contracts for managed care and other network arrangements, capitation contracts, and other similar arrangements relating to business development which, if disclosed, would be likely to injure the competitive position of the corporation.

13. The town shall provide the corporation with full funding of the network's existing capital program for the years two thousand seventeen, two thousand eighteen, and two thousand nineteen, as authorized in the town's two thousand sixteen capital budget.

§ 3354. Transfer of officers and employees; recognition and continuation of existing bargaining agents and units; layoffs; services. 1. On the effective date of the transfer of the facilities and operations of the Massena Memorial Hospital Corporation healthcare network pursuant to an agreement between the town and the corporation, as authorized in this title, officers and employees employed in the network shall become officers and employees of the corporation with equivalent offices, positions, and employment therewith and shall be deemed public officers or public employees for all purposes.

2. The employees of the corporation shall, for all purposes of article fourteen of the civil service law, be deemed to be employees of the town of Massena and shall be employed within the current town of Massena bargaining unit designation. The town office of labor relations shall, for all purposes of article fourteen of the civil service law, act as agent for the corporation and shall, with respect to the corporation, have all the powers and duties provided under article twenty-four of the executive law. Those persons who become employees of the corporation pursuant to subdivision one of this section or who enter into the service of the corporation following the effective date of the transfer shall retain their current bargaining unit designations. The corporation and the town shall recognize the existing certified or recognized employee organizations for town employees as the exclusive collective bargaining representatives for such employees.

Titles within collective bargaining units in existence prior to the transfer of operations to the corporation shall remain in those units and shall not be altered by the public employment relations board without the consent of the corporation, the town, and the recognized or certified representatives of the negotiating units involved. New titles created after the date of the transfer of operations to the corporation shall be placed in the appropriate unit of town employees consistent with the provisions of article fourteen of the civil service law.

3. The corporation shall be bound by all collective bargaining agreements between the town of Massena and such collective bargaining representatives in effect as of the date of transfer of operations to the corporation and any successor agreements between such parties.

4. The corporation shall be subject to the civil service law. For the purposes of such law, the following titles, including the proposed comparable corporate titles where applicable, shall, upon the effective date of the transfer described in subdivision one of this section, continue to be classified or designated exempt or managerial/confidential unless, pursuant to the provisions of the civil service law, a lesser or greater number of titles or positions is properly classified or designated exempt or managerial/confidential: Assistant Director Labs, Assistant Director MMS, Assistant Director Neuropathology, Assistant Director Nursing Medicine, Assistant Director Nursing Med. Surgery, Assistant Director Nursing Services, Assistant Director Sp. Cl. Services, Assistant Hospital Administrator, Associate Administrator HLT, Associate Director Medicine, Associate Director of Finance, Associate Director of Pathology, Associate Director Output Services, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Chief Orthopedic Surgery, Clinical Director, Coordinator Int. Services, Director Corporate Compliance, Director Nursing Services,

Director of Information Services, Director of Labs, Director of Mental Health Special Services, Director of Nursing Services, Director Pharmacy, Director Social Work Services, Director Surgical Services, Nurses Facilities Administrator, Secretary Board of Managers, and Secretary to Chief Executive Officer. Employees in existing or new titles that are properly classified or designated as exempt or managerial/confidential shall be considered employees of the corporation.

5. Nothing contained in this title shall be construed to affect:

(a) the rights of employees pursuant to a collective bargaining agreement;

(b) the bargaining relationship between the executive branch of the town of Massena and an employee organization; or

(c) existing law with respect to an application to the public employment relations board seeking the designation of persons as managerial or confidential.

6. There shall be no layoffs of any officers or employees of the Massena Memorial Hospital Corporation which are a direct consequence of the enactment of this title. There shall be a presumption that any layoffs occurring more than twenty-four months after the effective transfer date described in this subdivision shall be deemed not to be such a direct consequence.

7. Nothing contained in this section shall be construed to prevent the elimination of any service at any time as a result of the elimination of state or federal assistance, the elimination of available revenue reimbursement, loss of certification or licensure, or loss of financial viability.

§ 3355. General powers of the corporation. Except as limited by this title, the public health law, the mental hygiene law, the social services law, the education law, the civil practice law and rules, or any other applicable law or regulation, the corporation shall have power:

1. To sue and be sued and to participate in actions and proceedings, whether judicial, administrative, or otherwise;

2. To have a seal and to alter such seal, and to use it by causing it or a facsimile thereof to be affixed, impressed, or reproduced in any other manner;

3. To borrow money and issue bonds for any of its corporate purposes or its projects, or to refund the same, and to provide for the rights of the holders thereof;

4. To make and alter by-laws for its organization and management and, subject to agreements with its bondholders, to make and alter rules and regulations governing the exercise of its powers and the fulfillment of its purposes under this title;

5. To purchase, receive, take by grant, gift, devise, bequest, or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;

6. To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of, mortgage, pledge, use, and otherwise deal in and with, bonds and other obligations, shares, or other securities or interests issued by others, whether engaged in similar or different business, governmental, or other activities;

7. To accept subventions from other persons or any unit of government;

8. To sell, convey, lease, exchange, transfer, or otherwise dispose of, mortgage or pledge, or create a security interest in, all or any of

its property, or any interest therein, wherever situated, upon such terms and conditions and in such manner as the corporation shall determine;

9. To acquire by condemnation pursuant to the provisions of the eminent domain procedure law any real property within the town of Massena required by the corporation to carry out the powers granted by this title with the approval of both the Massena town council and the town supervisor;

10. To make capital contributions to other not-for-profit corporations;

11. To offer participation in the New York state and local employees' retirement system for all its officers and employees and to establish and carry out other retirement plans authorized pursuant to the retirement and social security law, which may be offered to all of its officers and employees not participating in the New York state and local employees' retirement system, and to establish and carry out other incentive and benefit plans, trusts, and provisions for any or all of its officers and employees, subject to the applicable provisions of article fourteen of the civil service law;

12. To be a promoter, partner, member, associate, or manager of other not-for-profit activities or business enterprises or ventures, or, to the extent permitted in any other jurisdiction, to be an incorporator of other corporations of any type or kind;

13. To make contracts, give guarantees, and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property or any interest therein, wherever situated;

14. To issue bonds for any corporate purpose or project, to refund the same, and to provide for the rights of holders thereof;

15. To accept gifts, grants, loans, or contributions of funds or property or financial or other aid in any form from, and enter into contracts or other transactions with, the federal government, the state, or any public corporation or any other source, and to use any such gifts, grants, loans, or contributions for any of its corporate purposes;

16. To grant options to renew any lease with respect to any project or projects and to grant options to buy any project at such price as the corporation may deem desirable;

17. To lend money, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so lent or invested;

18. To designate the depositories of its money;

19. To establish its fiscal year;

20. To conduct the activities of the corporation, have offices, and exercise the powers granted by this title in any jurisdiction within or without the United States;

21. To appoint such officers, employees, and agents as the corporation may require for the performance of its duties and to fix and determine their qualifications, duties, and compensation, subject to the provisions of the civil service law and any applicable collective bargaining agreement, and to retain or employ counsel, auditors, engineers, and private consultants on a contract basis or otherwise for rendering professional, management, or technical services and advice;

22. To use employees, agents, consultants, and facilities of the town, paying the town its agreed proportion of the compensation or costs pursuant to an agreement with the town;

23. To make and adopt plans, surveys, and studies necessary, convenient, or desirable to the effectuation of the purposes and powers of the corporation and to prepare recommendations in regard thereto;

24. Except as limited by state law or regulation, to fix and collect rates, rentals, fees, lease payments, and other charges for the services rendered by it or for the use of the facilities owned, controlled, or administered by or in the exercise of the powers of the corporation;

25. To enter upon such lands, waters, or premises as in the judgment of the corporation may be necessary, convenient, or desirable for the purpose of making surveys, soundings, borings, and examinations to accomplish any purpose authorized by this title, the corporation being liable for actual damage done;

26. The corporation may covenant and consent that the interest on any of its bonds or notes issued pursuant to this title shall be includable, under the United States Internal Revenue Code of 1986, as amended (the "code") or any subsequent corresponding internal revenue law of the United States, in gross income of the holders of the bonds or notes to the same extent and in the same manner that the interest on bills, bonds, notes, or other obligations of the United States is includable in the gross income of the holders thereof under the code or any such subsequent law;

27. To make, adopt, amend, enforce, and repeal rules for its governance and internal management and personnel practices, subject to article fourteen of the civil service law, where applicable;

28. To insure or otherwise to provide for the insurance of the corporation's property or operations and also contract against such other risks as the corporation may deem advisable, including the interest rate risk for obligations it issues bearing interest at a floating or otherwise adjustable rate which prevents the actual rate over the term of the debt from being ascertained at the date of its incurrence, and including the power to make any payments with respect thereto; and

29. To do all things necessary, convenient, or desirable, including ancillary and incidental activities, to carry out its purposes and for the exercise of the powers granted in this title.

§ 3356. Special powers of the corporation. In order to effectuate the purposes of this title, the corporation shall have the following additional powers, except as limited by this title, the public health law, the mental hygiene law, the social services law, the education law, the civil practice law and rules, and any other applicable law or regulation:

1. To operate, manage, superintend, and control any health facility under its jurisdiction and to repair, maintain, and otherwise keep up any such health facility, and to establish, collect, and adjust fees, rentals, and other charges for the sale, lease, or sublease of any such health facility or real property, subject to the terms and conditions of any contract, lease, sublease, or other agreement with the town;

2. To provide health and medical services for the public, directly or by agreement or lease with any person, firm, partnership, limited liability company, or private or public corporation or association through or in the health facilities of the corporation or otherwise, and to make internal policies governing admissions and health and medical services; and to establish, collect, and adjust fees and other charges for the provision of such health and medical services; and to provide

and maintain training programs for resident physicians, post-graduate clinical fellows, graduate students, other allied health professionals and intern medical services; and to sponsor and conduct research, educational, and training programs;

3. To provide uncompensated care to persons in need of health care services without the ability to pay;

4. To provide, maintain, and operate a medical transport service; provided, however, that nothing in this section shall prohibit the corporation from adopting a schedule of charges for medical transport;

5. To participate in managed care networks, fee-for-service, and other joint and cooperative arrangements for the provision of general comprehensive and specialty health care services, directly or through contract with other service providers or entities;

6. To establish subsidiary corporations or other entities in accordance with subdivision nine of this section:

(a) to meet the demands of health care delivery changes; and

(b) to market, manufacture, or develop products or services developed by the corporation's clinical and research activities;

7. To enter into contracts, leases, subleases, and other agreements for the purpose of affiliating with a medical college or colleges, including the state university of New York, in conjunction with the corporation's health facilities, which agreements may provide for the management, operation, and staffing of health facilities, the reconstruction, renovation, or addition to health facilities; the provision of necessary facilities, utilities, and services; and such other conditions or features necessary and proper for such purpose and for the public health and general welfare;

8. To determine the conditions under which a physician may be extended the privilege of practicing within a health facility under the jurisdiction of the corporation, to promulgate reasonable internal policies for the conduct of all persons, physicians, and allied health practitioners within such facility, and to appoint and grant privileges to qualified and competent clinical practitioners; and

9. (a) Except as provided in this subdivision or as expressly limited by any applicable state law or regulation, to exercise and perform all or part of its purposes, powers, duties, functions, or activities through one or more subsidiary corporations or companies owned or controlled wholly or in part by the corporation, which shall be formed pursuant to the business corporation law, the limited liability company law, or the not-for-profit corporation law, in each case subject to all the limitations provided in this title.

(b) Any such subsidiary may be authorized to act as a general or limited partner in a partnership or as a member of a limited liability company and to enter into an arrangement calling for an initial and subsequent payment by such subsidiary in consideration of an interest in revenues or other contractual rights.

(c) No subsidiary of the corporation shall own, operate, manage, or control the existing acute inpatient and outpatient facilities and services in operation as part of the Massena Memorial Hospital healthcare network on the effective date of this title.

(d) An entity shall be deemed a subsidiary corporation or company whenever and so long as: (i) more than half of any voting shares of such subsidiary are owned or held by the corporation or (ii) a majority of the directors, trustees, or members of such subsidiary are designees of the corporation.

§ 3357. Transfer of property; relationship with town; certain gifts, loans and guarantees by the town. 1. (a) The town may give, grant, sell, convey, lend, license the use of, or lease to the corporation, and the corporation may accept any property (except monies appropriated by the town and payable to the corporation pursuant to subdivision three of this section) which are useful in connection with the exercise by the corporation of any of its powers under this title in order to transfer the facilities and operations of the Massena Memorial Hospital health-care network to the corporation by agreement between the town and the corporation and any subsequent renewal or amendment thereof, by local law adopted by a majority vote of the Massena town council, notwithstanding any general, special, or local law, ordinance, resolution, or charter.

(b) Any such gift, grant, sale, conveyance, loan, license, or lease shall be upon such terms and conditions, for such consideration, if any, and for such term or terms of years, subject to the rights of the holders of any bonds, as the corporation and the town may agree. No real property of the town consisting of any health facility operated on the effective date of this title by the Massena Memorial Hospital healthcare network shall be transferred to the corporation in fee, except under such restrictions regarding rights of first refusal in favor of the town and subject to a right of reverter in the event that the corporation should cease to use such property for the provision of research, education, and health care, or other rights, to repurchase the property as the Massena town council shall approve by act, and subject to a restrictive covenant prohibiting the corporation from pledging or mortgaging the fee interest in the property. In the event that the town gives, grants, sells, conveys, lends, licenses, or leases any facilities to the corporation, the town may contract with the corporation to lease, borrow, license, operate, maintain, manage, and provide services for such facilities upon such terms and conditions and for such term or terms of years, subject to the rights of holders of bonds, as the corporation and the town may agree. The corporation, in furtherance of any purchase, conveyance, or lease of any property or facility from the town, may assume the primary responsibility for the payment of the principal and interest on any bonds or notes issued by the town for such property or facility.

2. The town may acquire by purchase, grant, lease, gift, or condemnation, pursuant to the eminent domain procedure law, real property in the name of the town for any corporate purpose of the corporation.

3. In addition to any other powers granted to it by law and consistent with the constitution and other provisions of law, the town shall appropriate sums of money to defray project costs or any other costs or expenses of the corporation, including operating expenses.

4. On the effective date of the transfer of the facilities and operations of Massena Memorial Hospital healthcare network pursuant to an agreement between the corporation and the town, the Massena Memorial Hospital board of managers shall cease to be responsible for operation of the network; provided, however, that the town shall continue the existence of the board of managers in the event that the contract between the corporation and the town requires the operation of the network to revert to the town in the event that the corporation should cease to use such property for the provision of health care or the corporation otherwise fails to meet its obligations under any agreement between the town and the corporation.

5. The town shall maintain its efforts to provide annual operating funding to the corporation to permit it to serve all uninsured and under-insured patients and provide quality health care services. The town shall maintain and provide an operating contribution to the corporation in an annual amount that is the difference between the corporation's total revenues minus total expenses. For purposes of this section, total revenue and total expenses shall include amounts attributable to the corporation, any subsidiary of the corporation, and any entity providing health care services thereto. The manner of calculating the town's annual maintenance of effort of the corporation shall be the process followed by the town in determining the maintenance of effort for the network. The town shall have the right of audit at any time and from time to time to confirm the details of corporate operations. The corporation shall provide monthly financial reports to the town that provide details concerning all business operations for the corporation on a consistent basis.

6. (a) Notwithstanding any general, special, or local law or charter provisions to the contrary, the town of Massena shall have the power and is hereby authorized, pursuant to section seven of article seventeen of the state constitution, to lend its money or credit to or in aid of the corporation or any subsidiary thereof for the purpose of providing health related facilities or hospital facilities for the prevention, diagnosis, or treatment of human disease, pain, injury, disability, deformity, or physical condition, and for facilities incidental or appurtenant thereto, as may be prescribed by law. The town is hereby authorized to prescribe such facilities by local law. The corporation or any such subsidiary thereof, as a condition to any such loan of money or credit, shall enter into a regulatory agreement with the town as to its charges, profits, dividends, and disposition of its property or franchises, which agreement shall be binding and enforceable by the town insofar as such agreement regulates such charges, profits, dividends, and disposition of property. The town may elect in such regulatory agreement to refrain from exercising all or any portion of its authority to so regulate such charges, profits, dividends, and disposition of property to the extent such charges, profits, dividends, and disposition of property are regulated by the state or any agency thereof. The town shall authorize such regulatory agreement by local law.

(b) In pursuance of the authority granted in this title, the town of Massena shall have the power and is hereby authorized, from time to time, to issue its bonds, notes, or other obligations in such principal amounts as it shall deem necessary, after taking into account other monies which may be available for the purposes set forth in this title. Such bonds, notes, or obligations shall be issued for the purpose of making loans to the corporation or any subsidiary thereof, paying interest on such bonds, notes, or other obligations, establishment of reserves to secure such notes, bonds, or other obligations, and paying all other obligations and expenditures incidental to and necessary or convenient for the making of such loans. Such bonds, notes, or obligations shall be issued in accordance with the applicable provisions of this chapter, the local finance law, and applicable local laws.

(c) Any guarantee by the town made pursuant to the authority granted in this section shall be authorized by act or acts of the town in the same manner as such act or acts authorizing the issuance of bonds of the town for the purposes for which such guarantee is undertaken.

(d) The town is also authorized to enact laws governing the conditions under which such loans, commitments, and guarantees shall be made.

7. For purposes of subdivision four of paragraph a of section 25.00 of the local finance law, amounts to be derived by the town of Massena from the corporation, or any subsidiary thereof, shall be included in the term "other income".

8. (a) Notwithstanding the provisions of any other state or local law to the contrary, including, but not limited to, sections six-n and six-j of the general municipal law, with the approval of the Massena town council, amounts deposited for or on behalf of the Massena Memorial Hospital healthcare network in the liability and casualty and workers' compensation reserve funds established by the town pursuant to such sections of the general municipal law, and investment earnings thereof, may be withdrawn by the town from such funds and transferred to the corporation and shall be used by the corporation for the purposes for which such funds were established.

(b) No amounts shall be withdrawn and transferred to the corporation pursuant to this subdivision unless, prior to such withdrawal or transfer, the corporation has agreed in writing to indemnify and hold harmless the town, and provide defense, for all claims, cases, proceedings, actions, or other matters against the town arising out of the properties, facilities, operations, or employees of the corporation, whether commenced before or after the date of transfer of such amounts, and to provide such other security for such obligation as the town may reasonably require.

9. The town shall be responsible for the payment of all outstanding bonded indebtedness of the Massena Memorial Hospital healthcare network that was accumulated prior to the creation of the public benefit corporation.

§ 3358. Bonds or notes of the corporation. 1. The corporation shall have the power and is hereby authorized, from time to time, to issue bonds, notes, or other obligations to pay the cost of any project or for any other corporate purpose, including the establishment of reserves to secure the bonds, the payment of principal of, premium, if any, and interest on the bonds and the payment of incidental expenses in connection therewith. The corporation shall have the power and is hereby authorized to enter into such agreements and perform such acts as may be required under any applicable federal legislation to secure a federal guarantee or other subsidy with respect to any bonds.

2. The corporation shall have the power, from time to time, to renew bonds or to issue renewal bonds for such purpose, to issue bonds to pay bonds, and, whenever it deems refunding expedient, to refund any bond by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and may issue bonds, partly to refund bonds then outstanding and partly for any other corporate purpose of the corporation. Bonds 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. Bonds issued by the corporation may be general obligations secured by the faith and credit of the corporation or may be special obligations payable solely out of particular revenues or other monies as may be designated in the proceedings of the corporation under which the bonds shall be authorized to be issued, subject as to priority only to any agreements with the holders of outstanding bonds pledging any particular property, revenues or monies. The corporation may also enter into loan agreements, lines of credit, and other security agreements and obtain for or on its behalf letters of credit, insurance, guarantees, or other credit enhancements, to the extent now or hereafter available, in each

case for securing its bonds or to provide direct payment of any costs which the corporation is authorized to pay.

4. (a) Bonds shall be authorized by resolution of the corporation, be in such denominations and bear such date or dates and mature at such time or times, as such resolution may provide; provided that bonds and renewals thereof shall mature within forty years from the date of original issuance of any such bonds.

(b) Bonds shall be subject to such terms of redemption, bear interest at such rate or rates, be payable at such times, 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 and conditions as such resolution may provide. Notwithstanding any other provision of law, the bonds of the corporation issued pursuant to this section shall be sold to the bidder offering the lowest true interest cost, taking into consideration any premium or discount not less than four nor more than fifteen days, Sundays excepted, after a notice of such sale has been published at least once in a newspaper of general circulation in the area served by the corporation, which shall state the terms of the sale. The terms of the sale may not change unless notice of such change is published in such newspaper at least one day prior to the date of the sale as set forth in the original notice of sale. Advertisements shall contain a provision to the effect that the corporation, in its discretion, may reject any or all bids made pursuant to such advertisements, and, in the event of such rejection, the corporation is authorized to negotiate a private or public sale or readvertise for bids in the form and manner described in this paragraph as many times as, in its judgment, may be necessary to effect satisfactory sale.

(c) Notwithstanding the provisions of paragraph (b) of this subdivision, whenever in the judgment of the corporation the interests of the corporation will be served thereby, the directors of the corporation, on the written recommendation of the chairperson, may authorize the sale of such bonds at private or public sale on a negotiated basis, or on either a competitive or negotiated basis. The corporation shall set guidelines governing the terms and conditions of any such private or public sales. The private or public bond sale guidelines set by the corporation shall include, but not be limited to, a requirement that where the interests of the corporation will be served by a private or public sale of bonds, the corporation shall select underwriters for each private or public bond sale conducted pursuant to a request for proposal process undertaken from time to time and consideration of proposals from qualified underwriters as determined by the corporation.

(d) The corporation shall have the power, from time to time, to amend such private bond sale guidelines in accordance with the provisions of this subdivision.

(e) In addition to the authority to sell notes at private sale contained in this section, the corporation may sell its notes at a privately negotiated sale to the town. The town is hereby authorized to temporarily invest town funds in such notes; provided that such notes mature at or before the time the town expects to expend such funds for the purposes for which such funds were raised.

(f) No private or public bond sale on a negotiated basis shall be conducted by the corporation without prior approval of the state comptroller. The corporation shall annually prepare and approve a bond sale report, which shall include the private or public bond sale guidelines as specified in this subdivision, amendments to such guidelines since

the last private or public bond sale report, an explanation of the bond sale guidelines and amendments, and the results of any sale of bonds conducted during the fiscal year. Such bond sale report may be a part of any other annual report that the corporation is required to make.

(g) The corporation shall annually submit its bond sale report to the state comptroller and copies thereof to the senate finance committee and the assembly ways and means committee.

(h) The corporation shall make available to the public copies of its bond sale report upon reasonable request thereof.

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

5. Any resolution or resolutions authorizing bonds or any issue of bonds by the corporation may contain provisions which may be a part of the contract with the holders of the bonds thereby authorized as to:

(a) pledging all or part of the revenues, together with any other monies or property of the corporation, to secure the payment of the bonds, or any costs of issuance thereof, including, but not limited to, any contracts, earnings, or proceeds of any grant to the corporation received from any private or public source, subject to such agreements with bondholders as may then exist;

(b) the setting aside of reserves and the creation of sinking funds and the regulation and disposition thereof;

(c) limitations on the purpose to which the proceeds from the sale of bonds may be applied;

(d) the rates, rents, fees, and other charges to be fixed and collected by the corporation and the amount to be raised in each year and the use and disposition of revenues;

(e) limitations on the right of the corporation to restrict and regulate the use of the project or part thereof in connection with which bonds are issued;

(f) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(g) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, including the proportion of bondholders which must consent to any such amendments or abrogations, and the manner in which such consent may be given;

(h) the creation of special funds into which any revenues or monies may be deposited;

(i) the terms and provisions of any trust, mortgage, deed, or indenture securing the bonds under which the bonds may be issued;

(j) vesting in a trustee or trustees such properties, rights, powers, and duties in trust as the corporation may determine, which may include any or all of the rights, powers, and duties of the trustees appointed by the bondholders pursuant to this title or limiting the rights, duties, and powers of such trustee;

(k) defining the acts or omissions to act which may constitute a default in the obligations and duties of the corporation to the bondholders and providing for the rights and remedies of the bondholders in the event of such default, including, as a matter of right, appointment of a receiver; provided, however, that such rights and remedies shall not be inconsistent with the general laws of the state and other provisions of this title;

(l) limitations on the power of the corporation to sell or otherwise dispose of any project or any part of such project or other property;

(m) limitations on the amount of revenues and other monies to be expended on operating, administrative, or other expenses of the corporation;

(n) the payment of the proceeds of bonds, revenues, and other monies to a trustee or other depository, and for the method of disbursement of such payments with such safeguards and restrictions as the corporation may determine; and

(o) any other matters of like or different character which in any way affect the security or protection of the bonds or the rights and remedies of the bondholders.

6. In addition to the powers conferred in this title upon the corporation to secure its bonds, the corporation shall have the power in connection with the issuance of bonds to adopt resolutions and enter into such trust indentures, agreements, or other instruments as the corporation may deem necessary, convenient, or desirable concerning the use or disposition of its revenues or other monies or property, including the mortgaging of any property and the entrusting, pledging, or creation of any other security interest in any such revenues, monies, or property, and the doing of any act, including refraining from the doing of any act, which the corporation would have the right to do in the absence of such resolutions, trust indentures, agreements, or other instruments. The corporation shall have power to enter into amendments of any such resolutions, trust indentures, agreements, or other instruments within the powers granted to the corporation by this title and to perform such resolutions, trust indentures, agreements, or other instruments. The provisions of any such resolutions, trust indentures, agreements, or other instruments may be made a part of the contract with the holders of bonds of the corporation.

7. Any provision of the uniform commercial code to the contrary notwithstanding, any pledge of or other security interest in revenues, monies, accounts, contract rights, general intangibles, or other personal property made or created by the corporation shall be valid, binding, and perfected from the time when such pledge is made or other security interest attaches, without any physical delivery of the collateral or further act, and the lien of any such pledge or other security interest shall be valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the corporation irrespective of whether or not such parties have notice of such pledge or security interest. No instrument by which such a pledge or security interest is created nor any financing statement need be recorded or filed.

8. Whether or not the bonds of the corporation are of such form and character as to be negotiable instruments under the terms of the uniform commercial code, the bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the bonds for registration.

9. Neither the directors nor the non-voting representatives nor the officers of the corporation nor any person executing its bonds shall be liable personally on its bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

10. Subject to such agreements with bondholders as may then exist, the corporation shall have power out of any funds available therefor to purchase bonds of the corporation, in lieu of redemption, at a price not exceeding, if the bonds are then redeemable, the redemption price then

applicable plus accrued interest to the next interest payment date, or, if the bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the bonds become subject to redemption plus accrued interest to the next interest payment date. Bonds so purchased shall thereupon be canceled.

11. The corporation shall have power and is hereby authorized to issue negotiable bond anticipation notes in conformity with applicable provisions of the uniform commercial code and may renew the same from time to time, but the maximum maturity of any such notes, including renewals thereof, shall not exceed five years from the date of issue of such original notes.

§ 3359. Remedies of bondholders. Subject to any resolution or resolutions adopted pursuant to this title:

1. In the event that the corporation shall default in the payment of principal of or interest on any issue of bonds 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 corporation shall fail or refuse to comply with the provisions of this title or shall default in any agreement made with the holders of any issue of bonds, the holders of twenty-five percent in aggregate principal amount of the bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the town in which the principal office of the corporation is located and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds for the purpose provided in this title.

2. Such trustee may, and upon written request of the holders of twenty-five percent in aggregate principal amount of such bonds outstanding shall, in its own name:

(a) by action or proceeding in accordance with the civil practice law and rules, enforce all rights of the bondholders, including the right to require the corporation to collect rents, rates, fees, and charges adequate to carry out any agreement as to, or pledge of, such rents, rates, fees, and charges and to require the corporation to carry out any other agreements with the holders of such bonds to perform its duties under this title;

(b) bring an action or proceeding upon such bonds;

(c) by action or proceeding, require the corporation to account as if it were the trustee of an express trust for the holders of such bonds;

(d) by action or proceeding, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds; and

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

3. 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 in this title or incident to the general representation of bondholders in the enforcement and protection of such bondholders' rights.

4. The supreme court shall have jurisdiction of any action or proceeding by the trustee on behalf of such bondholders. The venue of any such action or proceeding shall be laid in the town.

5. Before declaring the principal of bonds due and payable, the trustee shall first give thirty days' notice in writing to the corporation.

6. Any such trustee, whether or not the issue of bonds represented by such trustee has been declared due and payable, shall be entitled, as of right, to the appointment of any receiver of any part or parts of the project, the revenues of which are pledged for the security of the bonds of such issue, and such receiver may enter and take possession of such part or parts of the project and, subject to any pledge or agreement with the holders of such bonds, shall take possession of all monies and other property derived from such part or parts of the project and proceed with any construction thereon or the acquisition of any property, real or personal, in connection therewith that the corporation is under obligation to do, and to operate, maintain, and reconstruct such part or parts of the project and collect and receive all revenues thereafter arising therefrom, subject to any pledge or agreement with bondholders relating thereto, and perform the public duties and carry out the agreements and obligations of the corporation 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 revenues derived from the properties.

§ 3360. State and town not liable on corporation bonds. 1. The state shall not be liable on the bonds or notes of the corporation, and such bonds or notes shall not be a debt of the state, and such bonds and notes shall contain on the face thereof a statement to such effect.

2. Except as may be authorized by the town pursuant to section seven of article seventeen of the state constitution and section thirty-three hundred fifty-seven of this title, the town shall not be liable on the bonds or notes of the corporation, and such bonds or notes shall not be a debt of the town, and such bonds and notes shall contain on the face thereof a statement to such effect or a statement describing the town liability thereon, if any.

§ 3361. Monies of the corporation. All monies of the corporation from whatever source derived shall be paid to the treasurer of the corporation and shall be deposited forthwith in a bank or banks designated by the corporation. The monies in such accounts shall be paid out or withdrawn on the order of such person or persons as the corporation may authorize to make such requisitions. All deposits of such monies shall be secured by obligations of the United States or of the state or of any municipality of a market value equal at all times to the amount on deposit, and all banks and trust companies are authorized to give such security for such deposits. Alternatively, monies of the corporation may be deposited in money market funds rated in the highest short term or long term rating category by at least one nationally recognized rating agency. To the extent practicable, consistent with the cash requirements of the corporation, all such monies shall be deposited in interest bearing accounts. The corporation shall have power, notwithstanding the provisions of this section, to contract with the holders of any bonds as to the custody, collection, security, investment, and payment of any monies of the corporation or any monies held in trust or otherwise for the payment of bonds or in any way to secure bonds, and carry out any such contract notwithstanding that such contract may be inconsistent with the provisions of this section. Monies held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of such monies may be secured in the same manner as monies of the corporation, and all banks and trust companies are authorized to give such security for such deposits. Any monies of the corporation not required

for immediate use or disbursement may, at the discretion of the corporation, be invested in accordance with guidelines established by the corporation's board and amended from time to time. Subject to the provisions of any contract with bondholders and with the approval of the state comptroller, the corporation shall prescribe a system of accounts.

§ 3362. Bonds; legal investments for fiduciaries. The bonds of the corporation are hereby made securities in which all public officers and bodies of the state and all municipalities, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, and administrators, guardians, executors, trustees, and other fiduciaries, and all other persons whatsoever, who are now or 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. The bonds are also hereby made securities which may be deposited with and may be received by all public officers and bodies of the state and all municipalities for any purposes for which the deposit of bonds or other obligations of this state is now or hereafter may be authorized.

§ 3363. Agreement with state. The state does hereby pledge to and agree with the holders of any bonds issued by the corporation pursuant to this title and with those persons or public corporations who may enter into contracts with the corporation pursuant to the provisions of this title that the state will not alter, limit, or impair the rights hereby vested in the corporation to purchase, construct, own and operate, maintain, repair, improve, reconstruct, renovate, rehabilitate, enlarge, increase and extend, or dispose of any project, or any part or parts thereof, for which bonds of the corporation shall have been issued, to establish and collect rates, rents, fees, and other charges referred to in this title, to fulfill the terms of any contracts or agreements made with or for the benefit of the holders of bonds or with any person or public corporation with reference to such project or part thereof, or in any way impair the rights and remedies of the holders of bonds, until the bonds, together with interest thereon, including interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders of bonds, are fully met and discharged and such contracts are fully performed on the part of the corporation. The corporation is authorized to include this pledge and agreement of the state in any agreement with the holders of bonds.

§ 3364. Agreement with town. The town is authorized to pledge to and agree with the holders of any bonds issued by the corporation pursuant to this title and with those persons or public corporations who may enter into contracts with the corporation pursuant to the provisions of this title that the town will not alter, limit, or impair the rights hereby vested in the corporation to purchase, construct, own and operate, maintain, repair, improve, reconstruct, renovate, rehabilitate, enlarge, increase and extend, or dispose of any project, or any part or parts thereof, for which bonds of the corporation shall have been issued, to establish, collect, and adjust rates, rents, fees, and other charges referred to in this title, to fulfill the terms of any agreements made with the holders of the bonds or with any public corporation or person with reference to such project or part thereof, or in any way impair the rights and remedies of the holders of bonds, until the bonds,

together with interest thereon, including interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders of bonds, are fully met and discharged and such contracts are fully performed on the part of the corporation.

§ 3365. Tax exemption and tax contract by the state. 1. It is hereby determined that the creation of the corporation and the carrying out of its corporate purposes are in all respects for the benefit of the people of the state of New York and are public purposes. Accordingly, the corporation shall be regarded as performing an essential governmental function in the exercise of the powers conferred upon it by this title, and the corporation shall not be required to pay any fees, taxes, special ad valorem levies, or assessments of any kind, except as provided pursuant to any public health law, whether state or local, including but not limited to fees, taxes, special ad valorem levies, or assessments on real property, franchise taxes, sales taxes, or other taxes, upon or with respect to any property owned by it or under its jurisdiction, control, or supervision, or upon the uses thereof, or upon or with respect to its activities or operations in furtherance of the powers conferred upon it by this title, or upon or with respect to any fares, tolls, rentals, rates, charges, fees, revenues, or other income received by the corporation; provided, however, that any real property owned or acquired by the corporation outside of the town shall be exempt from real property taxes, ad valorem levies, or special assessments only pursuant to and to the extent provided by an agreement with the governing body of the municipality in which such real property is located; and provided, further, that subsidiaries of the corporation are not included within the foregoing exemption.

2. Any bonds issued pursuant to this title, together with the income from such bonds, shall at all times be exempt from taxation.

3. The state hereby covenants with the purchasers and with all subsequent holders and transferees of bonds issued by the corporation pursuant to this title, in consideration of the acceptance of and payment for the bonds, that the bonds of the corporation issued pursuant to this title and the income from such bonds, and all revenues, monies, and other property pledged to pay or to secure the payment of such bonds shall at all times be free from taxation.

4. The corporation may pay, or may enter into agreements with the town or any municipality to pay, a sum or sums annually or otherwise or to provide other considerations with respect to real property owned by the corporation located within the town or such municipality.

§ 3366. Actions against corporation. 1. Except in an action for wrongful death, no action or special proceeding shall be prosecuted or maintained against the corporation, its members, officers, or employees for personal injury or damage to real or personal property alleged to have been sustained by reason of the negligence, tort, or wrongful act of the corporation or of any member, officer, agent, or employee thereof, unless:

(a) notice of claim shall have been made and served upon the corporation within the time limit set by and in compliance with section fifty-e of the general municipal law;

(b) it shall appear by and as an allegation in the complaint or moving papers that at least thirty days have elapsed since the service of such notice and that adjustment or payment thereof has been neglected or refused; and

(c) the action or special proceeding shall be commenced within one year and ninety days after the happening of the event upon which the claim is based; and

(d) an action against the corporation for wrongful death shall be commenced in accordance with notice of claim and time limitation provisions of title eleven of article nine of this chapter.

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

3. The corporation may require any person presenting for settlement an account or claim for any cause whatsoever against the corporation to be sworn before a director, counsel, attorney, officer, or employee of the corporation designated for such purpose, concerning such account or claim and, when so sworn, to answer orally as to any facts relative to such account or claim. The corporation shall have power to settle or adjust all claims in favor of or against the corporation.

4. Any action or proceeding to which the corporation or the people of the state may be parties, in which any question arises as to the validity of this title, shall be preferred over all other civil causes of action or cases, except election causes of action or cases, in all courts of the state and shall be heard and determined in preference to all other civil business pending therein, except election causes, irrespective of position on the calendar. The same preference shall be granted upon application of the corporation or its counsel in any action or proceeding questioning the validity of this title in which the corporation may be allowed to intervene. The venue of any such action or proceeding shall be laid in the supreme court of the county.

5. The rate of interest to be paid by the corporation upon any judgment for which it is liable, other than a judgment on its bonds, shall be the rate prescribed by section five thousand four of the civil practice law and rules. Interest on payments of principal or interest on any bonds in default shall accrue at the rate borne by such bonds from the due date thereof until paid or otherwise satisfied.

6. All actions or proceedings against the corporation of whatsoever nature shall be brought in the county.

§ 3367. Audit and annual reports. 1. In conformity with the provisions of section five of article ten of the state constitution, the accounts of the corporation shall be subject to the supervision of the state comptroller, and an annual audit shall be performed by an independent certified public accountant. The corporation shall annually submit to the Massena town council, town supervisor, governor, state comptroller, chairperson of the senate finance committee, and chairperson of the assembly ways and means committee a detailed report pursuant to the provisions of section twenty-eight hundred of this chapter, and a copy of such report shall be filed with the clerk of the Massena town council and the town supervisor.

2. The corporation shall report, on an annual basis, the following information: the name, principal business address, and principal business activities of each subsidiary of the corporation; the name of all board members and officers of each subsidiary; the number of employees of each subsidiary; a list of all contracts in excess of one hundred thousand dollars entered into by the corporation and its subsidiaries, identifying the amount, purpose, and duration of such contract; and a financial statement, income statement, and balance sheet prepared by an

independent certified public accountant, all in accordance with generally accepted accounting principles applicable to the corporation and each of its subsidiaries. At the time the reports required by subdivision one of this section are submitted, such reports shall be provided to the governor, the temporary president of the senate, and the speaker of the assembly and a copy of such report shall be filed with the clerk of the Massena town council and the town supervisor.

§ 3368. Defense and indemnification. The corporation shall not execute any of its powers, including the special powers authorized by section thirty-three hundred fifty-six of this title, except as necessary to commence its corporate existence, until it has elected to make the provision of section eighteen of the public officers law applicable to its employees (as such term is defined in section eighteen of the public officers law) pursuant to subdivision two of such section; provided, however, that nothing contained within this section shall be deemed to permit the corporation to extend the provisions of section eighteen of the public officers law to any independent contractor.

§ 3369. Transfer of applications, proceedings, approvals and permits. 1. Any application, review, or process in relation to or in furtherance of the purposes of or contemplated by this title heretofore filed or undertaken, or any proceeding heretofore commenced, or any determination, finding, or award made, by the town or by the town with the federal government, the department of health, or any other public corporation shall inure to and for the benefit of the corporation to the same extent and in the same manner as if the corporation has been a party to such application, review, process, or proceeding from its inception, and the corporation shall be deemed a party thereto, to the extent not prohibited by any federal law. Any license, approval, permit, determination, finding, award, or decision heretofore or hereafter issued or granted pursuant to or as a result of any such application, review, process, or proceeding shall inure to the benefit of and be binding upon the corporation and shall be assigned and transferred by the town to the corporation, unless such assignment and transfer is prohibited by federal law.

2. All such applications, proceedings, licenses, approvals, permits, determinations, findings, awards, and decisions shall further inure to and for the benefit of and be binding upon any person leasing, acquiring, financing, constructing, maintaining, operating, using, or occupying any facility transferred by the town to the corporation pursuant to this title.

§ 3370. Separability. If any clause, sentence, paragraph, section, or part of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof involved in the controversy in which such judgment shall have been rendered.

§ 3371. Applicability of laws. The provisions of this title shall be subject to the provisions of the civil practice law and rules, the public health law, the mental hygiene law, the social services law, the education law, and any other applicable law or regulation, including any amendment thereto; provided, however, that nothing in this section shall require the town or corporation to seek approval or consent for any transfer pursuant to sections thirty-three hundred fifty-seven and thirty-three hundred sixty-nine of this title.

§ 2. This act shall take effect immediately.