

STATE OF NEW YORK

5766

2017-2018 Regular Sessions

IN SENATE

April 28, 2017

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed 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,

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

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

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

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

25 11. Upon completion of the design, construction, reconstruction,
26 improvement, rehabilitation, maintaining, repairing, furnishing, equip-
27 ping of or otherwise providing for park and recreation facilities, to
28 convey title to any such facilities to the city for use as park and
29 recreation facilities by the department;

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

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

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

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

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

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

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

8 § 1764. Transfer of property. 1. The department and the city, acting
9 by the mayor alone or by resolution of the council, may convey or trans-
10 fer to the authority, with or without consideration and without any
11 further authorization, any real, personal or mixed property (including
12 inalienable property of the city), or any interest therein, in order to
13 assist the authority in implementing a five-year facilities capital
14 plan.

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

27 § 1765. Exemption from land use review procedures and other require-
28 ments. 1. Except for the provisions of article eight of the environ-
29 mental conservation law and article fourteen of the parks, recreation
30 and historic preservation law, neither (a) the establishment or amend-
31 ment of a park facilities capital plan and actions relating to the
32 financing thereof, nor (b) the establishment or revision of a park
33 facilities master plan and actions relating to the financing thereof,
34 nor (c) any conveyance or other grant of property or of any interest
35 therein by the city, the department or any other person, firm or organ-
36 ization to the authority or to the department pursuant to a park facili-
37 ties capital plan, nor (d) the design, construction, reconstruction,
38 improvement, rehabilitation, maintaining, furnishing, repairing, equip-
39 ping or use of park facilities by the authority, including any
40 contracts, approvals, consents, agreements, permits or authorizations
41 necessary to accomplish the same, which are pursuant to a park facili-
42 ties capital plan, nor (e) the reconveyance or transfer of property to
43 the department or to the city by the authority or any disposition of
44 property pursuant to a park facilities capital plan, shall be subject to
45 the provisions of any general, special or local law, city charter,
46 administrative code, ordinance or resolution governing uniform land use
47 review procedures, any other land use planning review and approvals,
48 historic preservation procedures, architectural reviews, franchise
49 approvals and other state or local review and approval procedures
50 governing the use of land and the improvements thereon within the city.
51 Capital projects for park facilities to be undertaken by the authority
52 shall not be subject to the provisions of the charter of the city relat-
53 ing to site selection, land use review procedures, art commission review
54 procedures, general standards and cost limits, project scope and design
55 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

46 6. Upon the adoption of a resolution by the authority stating, for
47 reasons of efficiency, economy, compatibility or maintenance reliabil-
48 ity, that there is a need for standardization, the authority may estab-
49 lish procedures whereby particular supplies, materials or equipment are
50 identified on a qualified products list. Such procedures shall provide
51 for products or vendors to be added to or deleted from such list and
52 shall include provisions for public advertisement of the manner in which
53 such lists are compiled. The authority shall review such list no less
54 than twice a year for the purpose of making such modifications.
55 Contracts for particular supplies, materials or equipment identified on
56 a qualified products list may be awarded by the authority to the lowest

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

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

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

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

26 10. The provisions of article eight of the labor law shall be applica-
27 ble to all contracts entered into directly or indirectly by the authori-
28 ty.

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

33 § 1768. Funding of the authority. 1. Each year the authority shall
34 prepare and the board shall adopt an itemized estimate of the sum of
35 money it deems necessary from the department to cover the authority's
36 operating expenses for the ensuing fiscal year. Such estimate shall take
37 into account any prior year's surplus and shall be delivered to the
38 department for review at least ten business days prior to the date for
39 submission of the department's annual estimate and shall be included as
40 part of such department estimate. Upon appropriation of the city's
41 expense budget for such ensuing fiscal year, the amount of the authori-
42 ty's estimate shall be paid to the authority by the city in twelve equal
43 payments, each payable on the first day of each month of the fiscal
44 year. The authority shall not be required to present any vouchers for
45 such payments, but shall issue quarterly reports not later than thirty
46 days after the end of each quarter comparing actual expenditures to
47 estimated expenditures and analyzing any significant variances. The
48 authority shall develop procedures to ensure that it operates at all
49 times within the amounts payable to it pursuant to this section, after
50 taking into account funds available to the authority for such purpose
51 from sources other than the city. Expenditures of the authority from
52 funds paid to it by the city shall be subject to audit by the comp-
53 troller, who may recommend procedures designed to improve the authori-
54 ty's accounting and expenditure control expenditures. In the event the
55 authority's cash flow projections require that funds be advanced more
56 rapidly during a fiscal year than would occur pursuant to the payment

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

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

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

24 § 1769. Civil service. 1. a. The authority, for the purpose of admin-
25 istering the state civil service law, shall be deemed to be a municipal
26 commission provided, however, that (i) the authority may elect to dele-
27 gate the administration of any or all of the provisions of the civil
28 service law, except article fourteen of such law, to the department of
29 personnel of the city of New York with respect to titles established at
30 the authority and which the city has also established and promulgates;
31 (ii) the civil service commission of the city of New York shall exercise
32 on behalf of the authority the powers and duties of review assigned
33 under sections fifty, seventy-two, and seventy-six of the civil service
34 law; and (iii) the New York city office of administrative trials and
35 hearings will be designated the hearing office and shall conduct on
36 behalf of the authority such hearings as are required by sections seven-
37 ty-one, seventy-two, seventy-three, seventy-five and eighty-one of the
38 civil service law.

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

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

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

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

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

18 § 1770. Retirement of employees. Employees of the authority shall be
19 eligible to join the New York city employees' retirement system pursuant
20 to the usual rules of that system, provided that a new employee who upon
21 appointment by or transfer to the authority is a member of the New York
22 city employees retirement system may remain a member of the New York
23 city employees retirement system if, within ninety days of the effective
24 date of the transfer to or appointment by the authority, the employee
25 exercises an election to do so. Furthermore, the retirement rights of
26 employees of the department employed on the effective date of this title
27 shall not be impaired by reason of the enactment of this title into law.

28 § 1771. Collective negotiation. 1. For the purpose of article four-
29 teen of the civil service law, the authority shall be deemed to be the
30 public employer and as such shall negotiate with and enter into written
31 agreements with employee organizations representing the staff of the
32 authority that have been certified or recognized under such article. In
33 carrying on such negotiations, the authority shall consult with and seek
34 assistance from the office of labor relations and collective bargaining
35 of the city board and the New York city office of municipal labor
36 relations. The state public employment relations board shall have exclu-
37 sive jurisdiction for the purpose of administering the provisions of
38 such article and the provisions of section two hundred twelve of such
39 article shall not be applicable to any such negotiations.

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

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

50 4. a. The authority shall consult with the appropriate public employee
51 organization on the establishment of, and bargain all terms and condi-
52 tions of, any new titles it establishes which have a community of inter-
53 est with titles already represented by the public employee organization
54 which presently has representation rights for those titles at the
55 department or at the city of New York.

1 b. Any such titles for which terms and conditions are bargained pursu-
2 ant to paragraph a of this subdivision shall be deemed to be successor
3 titles within the meaning of applicable law and, so long as the respon-
4 sibilities of employees in these titles are reasonably related to the
5 responsibilities of employees currently represented by a public employee
6 organization, shall be accreted to the appropriate bargaining certifi-
7 icates for which such public employee organization shall be voluntarily
8 recognized as the bargaining agent under procedures acceptable to the
9 state public employment relations board.

10 § 1772. Use of outside design, drafting or inspection services. 1. All
11 design, drafting or inspection services necessary in connection with the
12 approved park facilities capital plan shall be performed by appropriate
13 employees of the authority, except as otherwise provided in this
14 section.

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

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

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

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

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

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

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

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

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

14 4. No later than ten days prior to the date set by the city charter
15 for the holding of hearings on the mayor's annual preliminary budget
16 statements for capital projects, the authority shall prepare a report
17 specifying the projects from the approved park facilities plan which the
18 authority plans to commit to during the next fiscal year. If the author-
19 ity intends to contract for design, drafting or inspection services in
20 connection with any project so specified, the report shall further spec-
21 ify (i) for which projects the services are needed; (ii) the type of
22 services to be provided pursuant to contract; (iii) the estimated cost
23 of the contract; and (iv) the reason or reasons why award of the
24 contract is consistent with this subdivision. The report shall be filed
25 in the authority's office and with the department, and shall be avail-
26 able to the public upon request. The authority shall file revisions to
27 the report so as to provide advance notice of not less than thirty days
28 of additional projects that the authority plans to undertake on which
29 the authority intends to contract for design, drafting or inspection
30 services. Such revisions shall be in accordance with the criteria of
31 this subdivision. Such revisions shall also identify projects which the
32 authority included in its report but which the authority does not intend
33 to pursue in the applicable fiscal year. The authority shall file such
34 revisions in the authority's office and with the department, and such
35 revisions shall be available to the public upon request. Such report and
36 revisions shall not preclude the authority from entering into contracts
37 or undertaking projects.

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

43 § 1773. Deposit and investment of moneys of the authority. 1. The
44 authority may establish and maintain funds for the purpose of receiving
45 and expending moneys received by the authority.

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

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

1 shall not be invested in instruments commonly known as repurchase agree-
2 ments.

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

13 § 1774. Exemption of the authority. 1. Notwithstanding any other
14 provision of law, any real or personal property, while owned or subject
15 to any rights of the authority, shall be exempt from all taxes, special
16 assessments and special ad valorem levies and from the payment of any
17 and all charges, rents or other payments to the city, other than charges
18 for services provided by the city's water and sewer systems. In addi-
19 tion, any in rem actions or proceedings brought against such property by
20 the city or any other actions or proceedings concerning any of the above
21 brought against the authority by the city, and any such actions or
22 proceedings shall be void and shall be subject to dismissal upon appli-
23 cation of the authority at the sole expense of the city of New York. In
24 no instance shall title to any such property pass to the city of New
25 York except by deed or other appropriate document of sale, release or
26 conveyance executed by the authority.

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

29 § 1775. Equal employment opportunity program and minority and women-
30 owned business enterprise program. 1. Notwithstanding any other incon-
31 sistent provision of law, sections 8-107 and 6-108.1 of the adminis-
32 tration code of the city of New York shall apply to the activities of
33 the authority.

34 2. a. The provisions of section 6-108.1 of the administrative code of
35 the city of New York with respect to the award of contracts to locally
36 based enterprises shall apply to contracts entered into by the authority
37 provided, however, the authority shall exercise the powers of the mayor
38 set forth in such section with respect to: the establishment of proce-
39 dures for the certification of businesses; the approval or granting of
40 waivers of the requirements of such section; the promulgation of rules
41 and regulations for the purpose of implementing the provisions of such
42 section; and the submission of annual reports concerning the adminis-
43 tration of the program established pursuant to such section. Notwith-
44 standing the foregoing, the limitation on gross receipts of qualified
45 locally based enterprises set forth in clause (a) of subdivision six of
46 paragraph a of section 6-108.1 of the administrative code of the city of
47 New York may be raised by the authority upon a determination that a
48 higher limitation is necessary to meet the goals of the locally based
49 enterprise program.

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

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

1 order, or any other program concerning equal employment opportunity or
2 affirmative action to which contracts entered into by the authority are
3 subject, such program shall be administered by an officer of the author-
4 ity designated by the authority, and no other agency shall have juris-
5 isdiction over the compliance by the authority with the requirements of
6 any such program.

7 § 1776. Claims and actions against the authority. 1. Except in an
8 action for wrongful death, no action or proceeding shall be prosecuted
9 or maintained against the authority, or any member, officer, agent, or
10 employee thereof, for personal injury or damage to real or personal
11 property alleged to have been sustained by reason of the negligence or
12 wrongful act of the authority or of any such member, officer, agent or
13 employee thereof, or for any other alleged tort of the authority or of
14 such member, officer, agency or employee thereof, unless (i) it shall
15 appear by and as an allegation in the complaint or moving papers that a
16 notice of claim shall have been made and served upon the authority,
17 within the time limit prescribed by and in compliance with section
18 fifty-e of the general municipal law, and that at least thirty days have
19 elapsed since the service of such notice and that adjustment or payment
20 thereof has been neglected or refused, and (ii) the action or proceeding
21 shall be commenced within one year after the happening of the event upon
22 which the claim is based. An action against the authority for wrongful
23 death shall be commenced in accordance with the notice of claim and time
24 limitation provisions of title eleven of article nine of this chapter.

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

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

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

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

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

12 § 1777. Limited liability. Neither the members of the board nor any
13 officers or employee of the authority acting on behalf thereof, while
14 acting within the scope of such person's authority, shall be subject to
15 any liability resulting from carrying out any of the powers expressly
16 given in this title. A trustee, officer or employee of the authority
17 shall be deemed an "employee" for the purposes of section fifty-k of the
18 general municipal law, provided, however, that any trustee appointed by
19 the governor or any employee of the state shall be deemed an "employee"
20 for the purposes of section eighteen of the public officers law for any
21 actions relating to their activities as a trustee of the authority
22 created by this title.

23 § 1778. Audit, annual and quarterly reports. 1. The authority shall,
24 within one hundred twenty days of the end of the city's fiscal year,
25 submit to the governor, the temporary president of the senate, the
26 speaker of the assembly, the minority leader of the senate, the minority
27 leader of the assembly, the chairs of the senate and assembly committees
28 on corporations, authorities and commissions, the chairman of the senate
29 committee on investigations, taxation, and government operations, the
30 chairman of the assembly committee on oversight, analysis, and investi-
31 gations, the mayor and the department a report on its operations during
32 such fiscal year. An annual audit of the authority shall be conducted by
33 an independent certified public accountant, and the authority's inde-
34 pendently audited financial statements shall be included in this report.

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

44 § 1779. Effect of inconsistent provisions. Insofar as the provisions
45 of this title are inconsistent with the provisions of any other law,
46 general, special or local or of the city charter or any local law, ordi-
47 nance or resolution of the city, the provision of this title shall be
48 controlling, provided that nothing contained in this section shall be
49 held to supplement or otherwise expand the powers or duties of the
50 authority otherwise set forth in this title.

51 § 1780. Investigations. The department of investigation of the city of
52 New York shall be authorized to conduct investigations relating to the
53 authority pursuant to chapter thirty-four of the New York city charter.

54 § 2. The opening paragraph of section 533 of the New York city char-
55 ter, as amended by a vote of the people of the city of New York at the

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

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

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

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

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

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

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

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

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

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

47 § 5. This act shall take effect immediately.