

STATE OF NEW YORK

11149

IN ASSEMBLY

November 13, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Cymbrowitz)
-- read once and referred to the Committee on Housing

AN ACT to amend the public housing law and the administrative code of the city of New York, in relation to establishing the New York city public housing preservation trust for properties owned or operated by the New York city housing authority and providing for the issuance of certain bonds of the New York city housing development corporation

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

1 Section 1. The public housing law is amended by adding a new article
2 14 to read as follows:

3 ARTICLE XIV

4 NEW YORK CITY PUBLIC HOUSING PRESERVATION TRUST

5 Section 600. Short title.

6 601. Legislative findings.

7 602. Definitions.

8 603. New York city public housing preservation trust.

9 604. Powers and duties of the trust.

10 605. Transfer of property.

11 606. Exemption from land use review procedures and other
12 requirements.

13 607. Resident protections and opportunities.

14 608. Compliance with codes.

15 609. Contracts of the trust.

16 610. Alternative project delivery contracts.

17 611. Additional authority.

18 612. Additional requirements for alternative project delivery
19 contracts.

20 613. Bonds of the trust and for its benefit.

21 614. Resources of the trust.

22 615. Bonds legal for investment and deposit.

23 616. Tax exemption and tax contract by the state.

24 617. Actions against the trust.

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

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- 1 618. Civil service and pension system membership.
- 2 619. Collective negotiation.
- 3 620. Application of state and local human rights laws.
- 4 621. Limited liability.
- 5 622. Audit and annual reports.
- 6 623. Jurisdiction over trust.
- 7 624. Effect of inconsistent provisions.
- 8 625. Severability.

9 § 600. Short title. This article shall be known and may be cited as
 10 the "New York city public housing preservation trust act".

11 § 601. Legislative findings. The legislature hereby finds and declares
 12 that significant capital investment is required to design, develop,
 13 construct, reconstruct, improve, modernize, rehabilitate, and repair the
 14 aging buildings owned or operated by the New York city housing authority
 15 which are deteriorating due to decades of diminishing capital invest-
 16 ment. Restrictions relating to the New York city housing authority's
 17 construction process, and its inability to utilize innovative project
 18 delivery methods, have exacerbated its capital needs. A new public enti-
 19 ty with greater flexibility to leverage capital investment and to manage
 20 the rehabilitation of these properties must be established. Repairing,
 21 modernizing, and improving New York city housing authority buildings
 22 must begin immediately so that hundreds of thousands of New Yorkers can
 23 reside in affordable housing that is decent, safe, sanitary, and in good
 24 repair.

25 § 602. Definitions. As used or referred to in this article:

26 1. "Alternative project delivery contract" means any project delivery
 27 method authorized by this article, including construction manager build,
 28 construction manager at risk, and design-build, pursuant to which one or
 29 more contracts for the provision of design or construction management
 30 and construction services are awarded pursuant to an open and compet-
 31 itive method of procurement, as specified in section six hundred ten of
 32 this article.

33 2. "Best value" means the basis for awarding contracts for services to
 34 a proposer that optimizes quality, cost and efficiency, price and
 35 performance criteria, which may include, but is not limited to:

- 36 (a) the quality of the proposer's performance on previous projects;
- 37 (b) the timeliness of the proposer's performance on previous projects;
- 38 (c) the level of customer satisfaction with the proposer's performance
 39 on previous projects;
- 40 (d) the proposer's record of performing previous projects on budget
 41 and ability to minimize cost overruns;
- 42 (e) the proposer's ability to limit change orders;
- 43 (f) the proposer's ability to prepare appropriate project plans;
- 44 (g) the proposer's technical capacities;
- 45 (h) the individual qualifications of the proposer's key personnel;
- 46 (i) the proposer's ability to assess and manage risk and minimize risk
 47 impact;
- 48 (j) the proposer's financial capability;
- 49 (k) the proposer's ability to comply with applicable requirements,
 50 including the provisions of articles one hundred forty-five, one hundred
 51 forty-seven and one hundred forty-eight of the education law;

52 (l) the proposer's past record of compliance with federal laws, state
 53 and local laws, rules, licensing requirements, where applicable, and
 54 executive orders, including, but not limited to, section three of the
 55 housing and urban development act of nineteen hundred sixty-eight, as

1 amended, or any successor provision, article fifteen-A of the executive
2 law, any other applicable laws concerning minority- and women-owned
3 business enterprise participation, the labor law, and any other applica-
4 ble labor and prevailing wage laws;

5 (m) the proposer's record of complying with existing labor standards,
6 maintaining harmonious labor relations, and protecting the health and
7 safety of workers and payment of wages above any locally-defined living
8 wage;

9 (n) a quantitative factor to be used in evaluation of bids or offers
10 for awarding of contracts for bidders or offerors that are certified as
11 minority or women owned business enterprises pursuant to article
12 fifteen-A of the executive law and certified pursuant to section thir-
13 teen hundred four of the New York city charter as minority or women
14 owned business enterprises. Where the trust identifies a quantitative
15 factor pursuant to this paragraph, the trust shall specify that busi-
16 nesses certified as minority or women owned business enterprises pursu-
17 ant to article fifteen-A of the executive law as well as those certified
18 as minority or women owned business enterprises pursuant to section
19 thirteen hundred four of the New York city charter are eligible to qual-
20 ify for such factor. Nothing in this paragraph shall be construed to
21 require that such businesses be concurrently certified as minority or
22 women owned business enterprises under such article and such section to
23 qualify for such quantitative factor; and

24 (o) a quantitative factor to be used in evaluation of bids or offers
25 for awarding of contracts for bidders or offerors that constitute busi-
26 ness concerns that provide economic opportunities for low and very low-
27 income persons. Such basis shall reflect, wherever possible, objective
28 and quantifiable analysis.

29 3. "Board" means the board of trustees of the trust.

30 4. "City" means the city of New York.

31 5. "Construction manager at risk" means a project delivery method
32 whereby a construction manager:

33 (a) serves as part of a team in conjunction with the owner in the
34 design phase of the project;

35 (b) during the construction phase, acts as general contractor for
36 agreed upon compensation as set forth in the construction manager at
37 risk agreement; and

38 (c) assumes the risk of construction costs exceeding an amount speci-
39 fied in the construction manager at risk agreement.

40 6. "Construction manager build" means a project delivery method where-
41 by a construction manager:

42 (a) serves as part of a team in conjunction with the owner in the
43 design phase of the project;

44 (b) under the oversight of the owner acts as the single source of
45 responsibility to bid, select and hold construction contracts on behalf
46 of the owner during the construction phase; and

47 (c) manages the construction project on behalf of the owner.

48 7. "Cost plus" means compensating a contractor for the cost to
49 complete a contract by reimbursing actual costs for labor, equipment and
50 materials plus an additional amount for overhead and profit.

51 8. "Design-build" means a project delivery method for the design and
52 construction of a project with a single entity, which may be a team
53 comprised of separate entities.

54 9. "Housing facilities" means the land and buildings thereon owned or
55 operated by NYCHA and the improvements made to such land and buildings

1 for use in connection with development or operation of dwelling accommo-
2 modations for persons of low-income.

3 10. "Mayor" means the mayor of the city of New York.

4 11. "NYCHA" means the New York city housing authority.

5 12. "NYCHA board" means the members of NYCHA appointed pursuant to
6 subdivision three of section four hundred two of this chapter.

7 13. "NYCHA CEO" means the chief executive officer of NYCHA who serves
8 pursuant to NYCHA's by-laws.

9 14. "NYCHA CFO" means the chief financial officer of NYCHA who serves
10 pursuant to NYCHA's by-laws.

11 15. "Project labor agreement" shall have the same meaning as described
12 in subdivision one of section two hundred twenty-two of the labor law. A
13 project labor agreement shall require participation in apprentice train-
14 ing programs in accordance with paragraph (e) of subdivision two of
15 section two hundred twenty-two of the labor law.

16 16. "Trust" means the New York city public housing preservation trust.

17 § 603. New York city public housing preservation trust. 1. There is
18 hereby established a public benefit corporation to be known as the "New
19 York city public housing preservation trust". The purpose of such trust
20 shall be the design, development, construction, reconstruction, improve-
21 ment, modernization, rehabilitation, repairing and operation of housing
22 facilities.

23 2. The trust shall be governed by and its powers shall be exercised by
24 a board of trustees consisting of nine members. The members shall be the
25 NYCHA CEO, the NYCHA CFO, the deputy mayor for housing and economic
26 development of the city of New York, or another deputy mayor designated
27 by the mayor if there is no deputy mayor with that designation, three
28 members appointed by the NYCHA CEO, including two housing facility resi-
29 dent members and one member at large, and three members appointed by the
30 mayor, including two housing facility resident members and one member
31 with experience in labor-related matters. The NYCHA CEO shall be the
32 chair of the trust. The board of trustees of the trust shall appoint
33 the president of the trust. The term of each member, other than members
34 -serving by virtue of their positions, shall be three years, except at
35 initial appointment when the terms shall be staggered so that no more
36 than two members shall have terms that end in any given year, provided
37 that the term of only one member appointed by the mayor shall end in any
38 given year.

39 3. Each appointed member shall continue in office until a successor
40 has been appointed and qualified unless otherwise removed as follows. A
41 member may be removed by the NYCHA CEO or mayor, whichever appointed
42 such member, upon the filing in the office of the trust and serving upon
43 the member the reasons therefor. Such document setting forth the
44 reasons shall be made available to the general public which shall
45 include, but not be limited to, publishing such reasons on the websites
46 of the trust and the New York city housing authority. In the event a
47 vacancy occurs in the office of an appointed member, the vacancy shall
48 be filled in the same manner as was the original appointment of the
49 member whose office became vacant.

50 4. Appointed members may engage in private employment, or in a profes-
51 sion or business, unless otherwise prohibited by law, rule or regu-
52 lation, provided, however, that notwithstanding any applicable provision
53 of law, the members shall be subject to the limitations contained in
54 sections two thousand six hundred three, two thousand six hundred four,
55 two thousand six hundred five, and two thousand six hundred six of the
56 New York city charter. The trust shall be an agency and such members

1 shall be public servants for the purposes of such sections. In addition,
2 such members shall be subject to the provisions of section one thousand
3 one hundred sixteen of the New York city charter and shall for the
4 purposes of such section be considered officers of the city. Further,
5 such members, the president and certain critical employees of the trust
6 as designated by the board or the president, shall be subject to the
7 provisions of section 12-110 of the administrative code of the city of
8 New York pertaining to the filing of annual disclosure reports with the
9 city conflicts of interest board, and for such purpose, the members of
10 the board of trustees shall be deemed to be compensated members of the
11 trust.

12 5. The board shall provide for the holding of regular meetings, and
13 such special meetings, at the call of the chair of the trust, as may be
14 necessary. A majority of the whole number of members shall constitute a
15 quorum for the transaction of business. The powers of the board shall be
16 vested in and exercised by a majority of the whole number of the members
17 thereof.

18 6. Members of the board, other than members serving by virtue of their
19 positions, shall receive a stipend in the amount of two hundred fifty
20 dollars for every four hours of work performed for the trust, not to
21 exceed one thousand five hundred dollars per month. In addition,
22 members shall be reimbursed for the actual and necessary expenses
23 incurred by them in the performance of their official duties as members
24 of the board of trustees.

25 7. The board shall appoint a president of the trust and determine the
26 compensation of the president. The president, who shall not be a member
27 of the board, shall be the chief executive officer of the trust and
28 shall be responsible for the discharge of the executive and administra-
29 tive functions and powers of the trust, including the power to appoint
30 and remove all other officers and employees of the trust, to fix the
31 compensation for employees subject to applicable civil service and
32 collective bargaining requirements, and to exercise powers of the board
33 that may be delegated by the board to the president. The president may
34 further delegate powers conferred by this article, including powers
35 delegated to the president by the board, to officers and employees of
36 the trust. The president shall serve at the pleasure of the board. The
37 president may designate one or more deputies and determine their rela-
38 tive ranks and duties. When the position of president is vacant, or
39 whenever by reason of illness or for any other reason the president
40 shall be prevented from attending to the duties of such position, the
41 highest-ranking deputy not absent or under disability shall act as pres-
42 ident.

43 8. The trust shall continue until terminated by law, provided, howev-
44 er, that no such law shall take effect so long as the trust shall have
45 bonds, notes or other similar obligations outstanding. Upon termination
46 of the existence of the trust, all of such trust's rights, property,
47 assets and funds shall thereupon vest in and be possessed by the NYCHA.

48 9. Notwithstanding any provision of law to the contrary, no officer or
49 employee of the state, or of any civil division thereof, or of any
50 public corporation, as defined in the general construction law, includ-
51 ing the NYCHA, shall be deemed to have forfeited or shall forfeit such
52 person's office or employment or any benefits provided under the retire-
53 ment and social security law or under any public retirement system main-
54 tained by the state or by the civil divisions thereof, or by any such
55 public corporation, by reason of such person's acceptance of membership

1 on the board of the trust or by virtue of such person being an officer
2 or employee of the trust.

3 § 604. Powers and duties of the trust. The trust shall have the
4 following powers and duties:

5 1. to sue and be sued;

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

7 3. to make and, as necessary, to amend and repeal by-laws for the
8 trust and the management and regulation of its affairs not inconsistent
9 with the provisions of this article;

10 4. to appoint the president of the trust and fix the president's
11 compensation, pursuant to section six hundred three of this article, and
12 to delegate powers of the board to the president;

13 5. to engage or assist in the development, design, construction,
14 reconstruction, improvement, modernization, rehabilitation, repairing,
15 and operation of housing facilities;

16 6. to acquire or transfer real and personal property and improvements
17 thereon, or any interest therein, by any method, necessary or convenient
18 for the exercise of its functions, powers and duties;

19 7. to encumber residential property and buildings held by the trust
20 and limit use to low, very low, and extremely low-income families each
21 as defined in the United States housing act of nineteen hundred thirty-
22 seven, as amended, or any successor provision;

23 8. to make and execute contracts and all other instruments necessary
24 or convenient for the exercise of its functions, powers and duties,
25 including procurement contracts consistent with applicable provisions of
26 this article. Notwithstanding any provision of law to the contrary,
27 including but not limited to article eight of this chapter, the trust
28 may enter into contracts, consistent with applicable provisions of this
29 article, with the NYCHA or on behalf of and for the benefit of the
30 NYCHA;

31 9. to enter into agreements with the NYCHA or other entities for the
32 provision of management, maintenance and other services;

33 10. notwithstanding the provisions of section twenty-five hundred four
34 of the insurance law or any other provision of law to the contrary, to
35 procure or cause to be placed or procured insurance on behalf of itself
36 and others against any loss in connection with its activities, proper-
37 ties and other assets, in such amounts and from such insurers as it
38 deems desirable;

39 11. to enter into agreements with public agencies and public entities
40 for the receipt of services;

41 12. to borrow and loan funds and issue bonds consistent with this
42 article;

43 13. to form or participate as members or partners of private entities,
44 which may include but are not limited to, not-for-profit corporations,
45 housing development fund corporations, limited liability corporations,
46 and limited partnerships, to further the purposes and powers given and
47 granted by this section;

48 14. to earn fees and other proceeds from the activities and powers
49 given and granted by this section;

50 15. to apply for or accept from any source any gifts, grants,
51 donations, or conveyances of land, money, other real or personal proper-
52 ty, or other items of value, or loans of funds or property or financial
53 or other aid or credit assistance in any form, including any guaranty,
54 line of credit, or grant, from the federal government or any agency or
55 instrumentality thereof, from the state or any agency or instrumentality
56 thereof, from the city or any agency or instrumentality thereof, or from

1 any other source, for any or all of the purposes specified in this arti-
2 cle, and it may comply, subject to the provisions of this article, with
3 the terms and conditions thereof;

4 16. prior to the approval of any rule or regulation affecting rights
5 and protections afforded to residents of housing facilities, including,
6 but not limited to, resident protections and opportunities pursuant to
7 section six hundred seven of this article, lease revisions, schedules of
8 special charges for services, repairs and utilities, and rules and regu-
9 lations to be incorporated into the lease by reference, the trust shall
10 post a notice containing the proposed rule or regulation on the website
11 of the trust and in a prominent location in the affected housing facili-
12 ty. Such notice shall include (a) a statement of the basis and purpose
13 of the proposed rule, (b) the time and place of public hearing, if any,
14 to be held, and (c) an opportunity to submit written comments and the
15 final date for receipt of written comments. The trust may adopt a rule
16 or regulation after receiving written comments on the proposed rule or
17 regulation for a period of at least thirty days. The trust shall
18 consider all written comments received in such period prior to adopting
19 such rule or regulation. In the event the trust determines that immedi-
20 ate adoption of any rule or regulation is necessary for the preservation
21 of health, safety or general welfare and that compliance with the fore-
22 going requirements of this subdivision would be contrary to the public
23 interest, such proposed item may be adopted on an emergency basis. The
24 trust shall provide written justification for such determination and
25 make such justification publicly available including via its website and
26 in a prominent location in the affected housing facility. Any such imme-
27 diate adoption shall only remain in effect for sixty days, and during
28 such time the trust shall comply with the requirements of this subdivi-
29 sion in order for the adoption of the rule or regulation to become
30 permanent; and

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

33 § 605. Transfer of property. 1. The NYCHA, acting by NYCHA board
34 resolution and in accordance with a disposition or similar plan approved
35 by the United States department of housing and urban development, which
36 shall include a letter of approval by the mayor of the city of New York
37 or a designee of the mayor, may transfer to the trust, with or without
38 consideration and without any further authorization, a leasehold inter-
39 est in its housing facilities and any ancillary personal property of
40 such facilities. The NYCHA shall remain the fee owner of any such hous-
41 ing facilities.

42 2. The trust shall not transfer, convey, encumber or permit or suffer
43 any transfer, conveyance, assignment, mortgage, pledge or other encum-
44 brance of any housing facilities, or any part thereof without prior
45 written consent of the NYCHA.

46 3. The trust shall ensure that any housing facilities transferred to
47 the trust pursuant to this section and any portions thereof are leased
48 in accordance with United States department of housing and urban devel-
49 opment eligibility and income-targeting requirements, to the extent
50 applicable to the units therein. Rents for such units shall not exceed
51 applicable program requirements for low-income housing projects as
52 established pursuant to federal law and regulations.

53 § 606. Exemption from land use review procedures and other require-
54 ments. 1. Except for the provisions of article eight of the environ-
55 mental conservation law and article fourteen of the parks, recreation
56 and historic preservation law, neither (a) the establishment or amend-

1 ment of a housing facility's disposition or similar plan pursuant to
2 agreement with the United States department of housing and urban devel-
3 opment and actions relating to the financing thereof, (b) the selection
4 of sites for projects, (c) any conveyance or other grant of property or
5 of any interest therein by the NYCHA or any other person, firm or organ-
6 ization to the trust, (d) the development of housing facilities by or
7 through the trust, including any contracts, approvals, consents, agree-
8 ments, permits or authorizations necessary to accomplish the same, and
9 (e) the reconveyance or transfer of property to the NYCHA by the trust,
10 shall be subject to the provisions of any general, special or local law,
11 city charter, administrative code, ordinance or resolution governing
12 uniform land use review procedures, any other land use planning review
13 and approvals, historic preservation procedures, architectural reviews,
14 franchise approvals and other state or local review and approval proce-
15 dures governing the use of land and the improvements thereon within the
16 city. Capital projects for housing facilities to be undertaken by or
17 through the trust shall not be subject to the provisions of the New York
18 city charter relating to site selection, land use review procedures, art
19 commission review procedures, general standards and cost limits, project
20 scope and design procedures, or contract registration and vouchering
21 procedures.

22 2. The trust shall be subject to zoning regulations to the same extent
23 that the NYCHA is subject to such regulations, if at all.

24 § 607. Resident protections and opportunities. 1. The protections
25 afforded to a resident of a housing facility shall be consistent with
26 those afforded to a public housing resident, to the extent permitted in
27 accordance with federal law, and subject to and with the approval of the
28 United States department of housing and urban development. These
29 protections shall include, but are not limited to:

30 (a) preserving the affordable character of such housing facility in
31 accordance with section eight of the United States housing act of nine-
32 teen hundred thirty-seven, as amended, or any successor provision;

33 (b) ensuring that any resident required to relocate temporarily for
34 purposes of rehabilitation or redevelopment of such housing facility may
35 return to such housing facility following the completion of such reha-
36 bilitation or redevelopment;

37 (c) providing a resident of such housing facility the opportunity to
38 establish and operate a council to represent residents in such housing
39 facility to address concerns relating to such facility and to be eligi-
40 ble for resident participation funding from the trust consistent with
41 funding available to residents of public housing pursuant to section
42 964.150 of title twenty-four of the code of federal regulations or any
43 successor regulation, provided that any resident council that, at the
44 time of the transfer of a housing facility to the trust, is certified by
45 the NYCHA as the resident council shall be recognized by the trust as
46 the resident council of such housing facility;

47 (d) providing a resident of a housing facility an opportunity for an
48 informal hearing to grieve any dispute that such resident may have with
49 respect to an action of the trust with regard to such resident's lease,
50 consistent with the obligation of a public housing agency pursuant to
51 paragraph eight of subdivision (e) of section 966.4 of title twenty-four
52 of the code of federal regulations or any successor regulation;

53 (e) providing a resident of a housing facility automatic renewal of
54 such resident's leases, except for good cause as specified in the lease
55 between such resident and the trust, consistent with the requirements
56 relating to a lease between a public housing agency and a tenant of a

1 dwelling unit pursuant to subparagraph (i) of paragraph two of subdivi-
2 sion (a) and subdivision (l) of section 966.4 of title twenty-four of
3 the code of federal regulations or any successor regulation;

4 (f) determining succession to a lease between a resident and the trust
5 in accordance with the succession policy described in the management
6 manual, and any amendments to such manual, of the NYCHA;

7 (g) permitting a resident whose rent would equal or exceed the rent to
8 owner, as defined in sections 983.3 and 983.258 of title twenty-four of
9 the code of federal regulations or any successor regulations, to remain
10 in a housing facility and pay rent in an amount to be determined by the
11 trust and the NYCHA and as set forth in the lease of such resident; and

12 (h) determining succession to a voucher pursuant to section eight of
13 the United States housing act of nineteen hundred thirty-seven, as
14 amended, or any successor provision, in accordance with the housing
15 voucher program administrative plan, and any amendments to such plan, of
16 the NYCHA.

17 2. The resident protections described in subdivision one of this
18 section shall be enumerated in the ground lease or other appropriate
19 agreement between the NYCHA and the trust. Nothing in this section shall
20 preclude the trust or the NYCHA from providing additional resident
21 protections, which may be enumerated in any such ground lease or agree-
22 ment.

23 3. The trust, to the greatest extent feasible, and consistent with
24 federal, state and local laws and regulations, shall ensure that employ-
25 ment and other economic opportunities be directed to residents of the
26 housing facilities, consistent with section three of the housing and
27 urban development act of nineteen hundred sixty-eight, as amended, and
28 section 135.40 of title twenty-four of the code of federal regulations
29 or any successor law or regulation.

30 4. The trust shall encourage resident participation in the operations
31 of the trust, consistent with part nine hundred sixty-four of title
32 twenty-four of the code of federal regulations or any successor regu-
33 lation, including, but not limited to, promoting opportunities to
34 contract with resident management corporations, or their equivalent,
35 where feasible.

36 § 608. Compliance with codes. The trust shall, in the design, develop-
37 ment, construction, reconstruction, improvement, modernization, rehabil-
38 itation, repair, and operation of or otherwise providing for housing
39 facilities, comply and cause all contractors of the trust to comply with
40 applicable sanitary and building laws and regulations.

41 § 609. Contracts of the trust. 1. Notwithstanding any provision of law
42 to the contrary, the trust shall establish and maintain procurement
43 policies that shall set forth the methods and procedures by which the
44 trust shall procure contracts for goods and services, including but not
45 limited to services for design, development, construction, recon-
46 struction, improvement, modernization, rehabilitation, repair and opera-
47 tion, related to property owned or leased by the trust, in a manner
48 consistent with the provisions of this article. Such policies shall
49 specifically include:

50 (a) a competitive sealed bidding process for the award of contracts in
51 which sealed bids are publicly solicited or solicited from a list of
52 prequalified bidders and opened and a contract is awarded to the lowest
53 responsive, responsible bidder;

54 (b) processes for awarding contracts for goods and services using
55 alternatives to competitive sealed bidding where competitive sealed
56 bidding is not practicable or not advantageous, in which case the trust

1 shall use the most competitive method of procurement that is appropriate
2 under the circumstances to select the proposer offering the best value
3 to the trust;

4 (c) a process for prequalifying bidders and proposers based on crite-
5 ria, which may include an entity's experience, past performance, ability
6 to undertake work, financial capability, responsibility, reliability and
7 status as a certified minority or women owned business enterprise pursu-
8 ant to article fifteen-A of the executive law or section thirteen
9 hundred four of the New York city charter;

10 (d) reasonable procedures to secure the meaningful participation of
11 minority and women owned business enterprises in the trust's procurement
12 process. The trust may use the same measures to enhance minority and
13 women owned business enterprise participation as are available to the
14 city pursuant to applicable law, including section 6-129 of the adminis-
15 trative code of the city of New York;

16 (e) processes for awarding alternative project delivery contracts, in
17 a manner consistent with the terms of section six hundred ten of this
18 article;

19 (f) procedures for the fair and equitable resolution of contract
20 disputes, for appeals of responsiveness and responsibility determi-
21 nations by the trust, and for appeals of prequalification determi-
22 nations;

23 (g) a process for making purchases of contracts procured by public
24 agencies and public entities; and

25 (h) a mechanism for procurements without a formal competitive process
26 where:

27 (1) the existence of an emergency involving danger to life, safety or
28 property requires immediate action and cannot await a competitive proc-
29 ess for goods or services to be purchased, including, but not limited
30 to, services for construction, reconstruction, rehabilitation, alter-
31 ation, renovation, maintenance or repairs, which are essential to effi-
32 cient operation or the adequate provision of service by the trust and as
33 a consequence of unforeseen circumstance such purchase cannot await a
34 competitive process;

35 (2) a procurement's value does not exceed two hundred fifty thousand
36 dollars;

37 (3) the trust receives no responsive bids or only a single responsive
38 bid in response to a solicitation for competitive bids or proposals;

39 (4) a procurement's value does not exceed five hundred thousand
40 dollars and is made from a business certified as a minority or women
41 owned business enterprise pursuant to article fifteen-A of the executive
42 law and section thirteen hundred four of the New York city charter.
43 Nothing in this paragraph shall be construed to require that such busi-
44 ness be concurrently certified as minority or women owned business
45 enterprises under article fifteen-A of the executive law and section
46 thirteen hundred four of the New York city charter to be awarded such a
47 contract;

48 (5) a duly appointed representative of the trust determines in writing
49 that, based on a market analysis, only one source for the required goods
50 or services, including but not limited to, services for construction,
51 reconstruction, rehabilitation, alteration, renovation, maintenance and
52 repairs, are available; or

53 (6) the contract is a contract between the trust and another govern-
54 mental entity, including, but not limited to the NYCHA.

55 2. Contracts of the trust shall be subject to sections 6-108 and 6-123
56 of the administrative code of the city of New York, and the trust shall

1 constitute a "contracting agency" for the purposes of section 6-123 of
2 the administrative code of the city of New York.

3 3. The provisions of section one hundred six-b of the general municipi-
4 pal law shall apply to the trust.

5 4. Unless a federal requirement conflicts with any procurement proce-
6 sure set forth in this article, the trust shall be required to comply
7 with such procedure.

8 § 610. Alternative project delivery contracts. 1. Notwithstanding any
9 provision of law to the contrary, including but not limited to section
10 seventy-two hundred ten of the education law, and in conformity with the
11 requirements of this article, for any public work undertaken pursuant to
12 a project labor agreement the trust may use alternative project delivery
13 contracts.

14 (a) A contractor selected by the trust to enter into an alternative
15 project delivery contract may be selected through a two-step method, as
16 follows:

17 (1) The first step shall be the generation of a list of responding
18 entities that have demonstrated the general capability to perform the
19 alternative project delivery contract. Such list shall consist of a
20 specified number of responding entities, as determined by the trust, and
21 shall be generated based upon the trust's review of responses to a
22 publicly advertised request for qualifications. The trust's request for
23 qualifications shall include a general description of the public work,
24 the maximum number of responding entities to be included on such list,
25 the selection criteria to be used and the relative weight of each crite-
26 ria in generating such list. Such selection criteria shall include the
27 qualifications and experience of the entity or team of entities, organ-
28 ization, demonstrated responsibility, ability of the entity or team of
29 entities or of a member or members of the entity or team of entities to
30 comply with applicable requirements, including the provisions of arti-
31 cles one hundred forty-five, one hundred forty-seven and one hundred
32 forty-eight of the education law, past record of compliance with the
33 labor law, and such other qualifications the trust deems appropriate,
34 which may include but are not limited to project understanding, finan-
35 cial capability and record of past performance. The trust shall evaluate
36 and rate all responding entities to the request for qualifications.
37 Based upon such ratings, the trust shall list the responding entities
38 that shall receive a request for proposals in accordance with subpara-
39 graph two of this paragraph. To the extent consistent with applicable
40 federal law, the trust shall consider, when awarding any contract pursu-
41 ant to this section, the participation of (i) responding entities that
42 are certified as minority or women owned business enterprises pursuant
43 to article fifteen-A of the executive law, or certified pursuant to
44 local law as minority or women owned business enterprises, (ii) small
45 business concerns identified pursuant to subdivision (b) of section one
46 hundred thirty-nine-g of the state finance law, and (iii) business
47 concerns that provide economic opportunities for low and very low-income
48 persons. In addition, nothing in this section shall be deemed to super-
49 seede any prequalification policies adopted by the trust pursuant to
50 section six hundred nine of this article.

51 (2) The second step shall be the selection of the proposal which is
52 the best value to the trust. The trust shall issue a request for
53 proposals to the responding entities listed pursuant to subparagraph one
54 of this paragraph. If such a responding entity consists of a team of
55 separate entities, the entities that comprise such a team shall remain
56 unchanged from the responding entity as listed pursuant to subparagraph

1 one of this paragraph unless otherwise approved by the trust. The
2 request for proposals shall set forth the public work's scope of work,
3 and other requirements, as determined by the trust, which may include
4 separate goals for work under the contract to be performed by businesses
5 certified as minority or women owned business enterprises pursuant to
6 article fifteen-A of the executive law, or certified pursuant to local
7 law as minority or women owned business enterprises, or goals estab-
8 lished pursuant to section three of the housing and urban development
9 act of nineteen hundred sixty-eight, as amended, or any successor
10 provision, if applicable. The request for proposals shall also specify
11 the criteria to be used to evaluate the responses and the relative
12 weight of each of such criteria. Such criteria shall include the
13 proposal's cost, the quality of the proposal's solution, the qualifica-
14 tions and experience of the proposer, and other factors deemed pertinent
15 by the trust, which may include, but shall not be limited to, the
16 proposal's manner and schedule of project implementation, the proposer's
17 ability to complete the work in a timely and satisfactory manner, main-
18 tenance costs of the completed public work, maintenance of traffic
19 approach, and community impact. The trust may engage in negotiations or
20 other discussions with all qualified vendors that have expressed inter-
21 est, provided that the trust maintains a written record of the conduct
22 of negotiations or discussions and the basis for every determination to
23 continue or suspend negotiations, and further provided that if the trust
24 determines for a particular contract or for a particular type of
25 contract that it is in the trust's best interest to negotiate or enter
26 into discussions with fewer proposers, it may make such a determination
27 in writing. If the trust enters into such negotiations, the trust shall
28 allow all proposers to revise their proposals upon conclusion of negoti-
29 ations, and the trust shall evaluate the proposers' revised proposals
30 using the criteria included in the request for proposals. Any contract
31 awarded pursuant to this section shall be awarded to a responsive and
32 responsible proposer, which, in consideration of these and other speci-
33 fied criteria deemed pertinent, offers the best value as determined by
34 the trust. The request for proposals shall include a statement that
35 proposers shall designate in writing those portions of the proposal that
36 contain trade secrets or other proprietary information that are to
37 remain confidential, so that the material designated as confidential
38 shall be readily separable from the proposal. Nothing in this subdivi-
39 sion shall be construed to prohibit the trust from negotiating final
40 contract terms and conditions including cost. All proposals submitted
41 shall be scored according to the criteria listed in the request for
42 proposals and such final scores shall be published on the trust's
43 website after the date upon which such contract may be implemented.

44 (b) The trust, in awarding an alternative project delivery contract to
45 a contractor offering the best value may use the following types of
46 contracts:

47 (1) a cost-plus not to exceed guaranteed maximum price form of
48 contract in which the trust shall be entitled to monitor and audit all
49 costs. In establishing the schedule and process for determining a guar-
50 anteed maximum price, the contract between the trust and the contractor
51 shall (i) describe the scope of the work and the cost of performing such
52 work, (ii) include a detailed line item cost breakdown, (iii) include a
53 list of all drawings, specifications and other information on which the
54 guaranteed maximum price is based, (iv) include the dates of substantial
55 and final completion on which the guaranteed maximum price is based, and
56 (v) include a schedule of unit prices;

1 (2) a lump sum contract in which the contractor agrees to accept a set
2 dollar amount for a contract which comprises a single bid without
3 providing a cost breakdown for all costs such as for equipment, labor,
4 materials, as well as such contractor's profit for completing all items
5 of work comprising the public work;

6 (3) incentive payments identified in the text of the contract for
7 performance objectives; or

8 (4) a combination of elements of the contract types listed herein.

9 2. All alternative project delivery contracts entered into pursuant to
10 this section shall include a clause requiring that any professional
11 services regulated by articles one hundred forty-five, one hundred
12 forty-seven and one hundred forty-eight of the education law shall be
13 performed and stamped and sealed, where appropriate, by a professional
14 licensed in accordance with the appropriate article.

15 3. The submission of a proposal or responses or the execution of an
16 alternative project delivery contract pursuant to this article shall not
17 be construed to be a violation of section six thousand five hundred
18 twelve of the education law.

19 4. Each alternative project delivery contract entered into by the
20 trust pursuant to this article shall comply with the objectives and
21 goals relating to the performance of design and construction services by
22 minority and women owned business enterprises pursuant to section 6-129
23 of the administrative code of the city of New York, or, for projects or
24 public works receiving federal aid, applicable federal requirements for
25 disadvantaged business enterprises or minority and women owned business
26 enterprises and section three of the housing and urban development act
27 of nineteen hundred sixty-eight, as amended, or any successor provision,
28 if applicable.

29 5. (a) Notwithstanding any provision of law to the contrary, all
30 rights or benefits, including terms and conditions of employment, and
31 protection of civil service and collective bargaining status of all
32 employees of the NYCHA and the trust solely in connection with the use
33 of an alternative project delivery contract pursuant to this section
34 shall be preserved and protected.

35 (b) The use of alternative project delivery contracts pursuant to this
36 section shall not result in the (1) displacement of any currently
37 employed worker of the NYCHA or loss of position, including partial
38 displacement such as a reduction in the hours of non-overtime work,
39 wages or employment benefits, or result in the impairment of existing
40 collective bargaining agreements to which the NYCHA is a party, or (2)
41 transfer of existing duties and functions related to maintenance and
42 operations currently performed by existing employees of the NYCHA to a
43 contractor.

44 (c) Employees of the trust and NYCHA serving in positions in newly
45 created titles shall be assigned to the appropriate bargaining unit.
46 Nothing contained in this section shall be construed to affect (1) the
47 existing rights of employees of NYCHA pursuant to an existing collective
48 bargaining agreement, (2) the existing representational relationships
49 among employee organizations representing employees of NYCHA, or (3) the
50 bargaining relationships between NYCHA and such employee organizations.

51 (d) Without limiting contractors' obligations under alternative
52 project delivery contracts to issue their own initial certifications of
53 substantial completion and final completion, public employees of the
54 trust shall review and determine whether the work performed by contrac-
55 tors is acceptable and has been performed in accordance with the appli-
56 cable alternative project delivery contracts, and if such public employ-

1 ees so determine, such public employees shall accept contractors'
2 substantial or final completion of the public works as applicable.
3 Performance by public employees of the trust of any review described in
4 this subdivision shall not be construed to modify or limit contractors'
5 obligations to perform the work in strict accordance with the applicable
6 alternative project delivery contract or the contractors' or any subcon-
7 tractors' obligations or liabilities under any law.

8 § 611. Additional authority. The procurement authority conferred by
9 this article shall not impact or impair, and shall be in addition to,
10 the authority conferred by the NYCHA modernization investment act and
11 the New York city public works investment act.

12 § 612. Additional requirements for alternative project delivery
13 contracts. Construction performed under a contract entered into by the
14 trust pursuant to this article shall be deemed a "public work" to be
15 performed in accordance with the provisions of article eight of the
16 labor law, as well as subject to sections two hundred, two hundred
17 forty, two hundred forty-one and two hundred forty-two of the labor law
18 and enforcement of prevailing wage requirements pursuant to applicable
19 law or, for projects or public works receiving federal aid, applicable
20 federal requirements for prevailing wage. Any contract entered into
21 pursuant to section six hundred ten of this article shall include a
22 clause requiring the selected alternative project delivery contractor to
23 obligate every tier of contractor working on the public work to comply
24 with the project labor agreement required by section six hundred ten of
25 this article, and shall include project labor agreement compliance moni-
26 toring and enforcement provisions consistent with any such project labor
27 agreement.

28 § 613. Bonds of the trust and for its benefit. 1. For the purposes of
29 this section, the term "project" means the development, design,
30 construction, reconstruction, improvement, rehabilitation, repairing and
31 operation of housing facilities.

32 2. The trust shall have the power and is hereby authorized from time
33 to time to issue bonds, in conformity with applicable provisions of the
34 uniform commercial code, in such principal amounts as it may determine
35 to be necessary to pay the cost of any project and to fund reserves to
36 secure such bonds, including incidental expenses in connection there-
37 with. The trust shall have the power from time to time to refund any
38 bonds of the trust by the issuance of new bonds and may issue bonds
39 partly to refund bonds of the trust then outstanding and partly to pay
40 the cost of any project. Bonds issued by the trust shall be payable as
41 may be designated in the resolution of the trust under which the bonds
42 shall be authorized to be issued, subject to any agreements with the
43 holders of outstanding bonds pledging any particular revenues or moneys.

44 3. The trust shall be authorized to obtain insurance, letters of cred-
45 it and other credit or liquidity facilities related to its bonds.

46 4. The board may delegate to the chair or the president of the trust
47 the power to set the final terms of bonds.

48 5. Whenever the trust shall determine that the issuance of its bonds
49 is appropriate, the trust shall make a determination as to the arrange-
50 ments necessary for the issuance and sale of such bonds, including the
51 underwriting of such bonds through the public or private sale of such
52 bonds, and such determination shall include compensation for services
53 rendered as the trust deems appropriate. Such determination shall be set
54 forth in a resolution of the trust, which shall authorize issuance of
55 such bonds. The bonds shall bear interest at such fixed or variable
56 rates and shall be in such denominations, be in such form, either coupon

1 or registered, be sold at such public or private sale, be executed in
2 such manner, be denominated in United States currency, be payable in
3 such medium of payment, at such place and be subject to such terms of
4 redemption as the trust may provide in such resolution.

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

8 (a) pledging all or part of its revenues, including, but not limited
9 to, project-based or tenant-based assistance pursuant to section eight
10 of the United States housing act of nineteen hundred thirty-seven, as
11 amended, or any successor provision, and assistance provided to NYCHA
12 pursuant to section nine of the United States housing act of nineteen
13 hundred thirty-seven, as amended, or any successor provision, together
14 with any other moneys, securities or contracts, to secure the payment of
15 the bonds, subject to such agreements with bondholders as may then
16 exist;

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

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

21 (d) limitations on the issuance of additional bonds, the terms upon
22 which additional bonds may be issued and secured and the refunding of
23 bonds;

24 (e) the procedure, if any, by which the terms of any contract with
25 bondholders may be amended or abrogated, including the proportion of
26 bondholders which are needed to consent thereto and the manner in which
27 such consent may be given;

28 (f) vesting in a bond trustee or trustees such properties, rights,
29 powers and duties in trust as the trust may determine; and

30 (g) defining the acts or omissions to act that may constitute a
31 default in the obligations and duties of the trust to the bondholders
32 and providing for the rights and remedies of the bondholders in the
33 event of such default, including as a matter of right the appointment of
34 a receiver, provided, however, that such rights and remedies shall not
35 be inconsistent with the general laws of the state and other provisions
36 of this article.

37 7. In addition to the powers herein conferred upon the trust to secure
38 its bonds, the trust shall have power in connection with the issuance of
39 bonds to enter into such agreements for the benefit of the bondholders
40 as the trust may deem necessary, convenient or desirable concerning the
41 use or disposition of its revenues or other moneys, including the
42 entrusting, pledging or creation of any other security interest in any
43 such revenues, moneys and the doing of any act, including refraining
44 from doing any act, which the trust would have the right to do in the
45 absence of such agreements. The trust shall have power to enter into
46 amendments of any such agreements within the powers granted to the trust
47 by this article and to perform such agreements. The provisions of any
48 such agreements may be made a part of the contract with the holders of
49 bonds of the trust.

50 8. Notwithstanding any provision of the uniform commercial code to the
51 contrary, any pledge of or other security interest in revenues, moneys,
52 accounts, contract rights, general intangible or other personal property
53 made or created by the trust shall be valid, binding and perfected from
54 the time when such pledge is made or other security interest attaches
55 without any physical delivery of the collateral or further act, and the
56 lien of any such pledge or other security interest shall be valid, bind-

1 ing and perfected against all parties having claims of any kind in tort,
2 contract or otherwise against the trust irrespective of whether or not
3 such parties have notice thereof. No instrument by which such a pledge
4 or security interest is created nor any financing statement need be
5 recorded or filed.

6 9. Whether or not the bonds of the trust are of such form and charac-
7 ter as to be negotiable instruments under the terms of the uniform
8 commercial code, the bonds are hereby made negotiable instruments within
9 the meaning of and for all the purposes of the uniform commercial code,
10 subject only to the provisions of the bonds for registration.

11 10. Neither the members of the board nor any person executing bonds
12 shall be liable personally thereon or be subject to any personal liabil-
13 ity or accountability solely by reason of the issuance thereof. The
14 bonds or other obligations of the trust shall not be a debt of NYCHA,
15 the city, or the state, and neither the NYCHA, the city nor the state
16 shall be liable thereon, nor shall they be payable out of any funds
17 other than those of the trust, and such bonds shall contain on the face
18 thereof a statement to such effect.

19 11. The trust, subject to such agreements with bondholders as then may
20 exist, shall have power to purchase bonds of the trust out of any moneys
21 available therefor, which shall thereupon be cancelled.

22 12. Notwithstanding any provision of article twelve of the private
23 housing finance law, section twenty-nine hundred seventy-six of the
24 public authorities law or any other general, special or local law to the
25 contrary, (a) the purposes of the New York city housing development
26 corporation and its powers granted in article twelve of the private
27 housing finance law also shall include, subject to the provisions of any
28 contract with holders of its notes and bonds, the making of loans to the
29 trust and entities referred to in subdivision thirteen of section six
30 hundred four of this article, and (b) bonds of the New York city housing
31 development corporation issued for, or to refund bonds issued for, such
32 purpose or the purposes of paying costs of issuance thereof or funding
33 reserves to secure such bonds (i) may be sold without any consultation
34 or approval otherwise required by subdivision two of section six hundred
35 fifty-five of the private housing finance law, (ii) shall not be
36 included in any calculation of outstanding bonds and notes for purposes
37 of section six hundred fifty-six of the private housing finance law and
38 shall not be secured by any capital reserve fund established pursuant
39 thereto, and (iii) shall not be included in any calculation of bonds
40 issued by the New York city housing development corporation for purposes
41 of section twenty-nine hundred seventy-six of the public authorities
42 law.

43 § 614. Resources of the trust. 1. Subject to the provisions of this
44 article, the members of the board shall receive, accept, invest, admin-
45 ister, expend and disburse for its corporate purposes all money of the
46 trust from whatever sources derived including (a) the proceeds of bonds,
47 and (b) any other payments, gifts, or appropriations to the trust from
48 any other source.

49 2. Subject to the provisions of any contract with bondholders, the
50 money of the trust shall be paid to the trust and shall not be commin-
51 gled with any other money. The money of the trust shall be deposited in
52 accounts held in the trust's name in the bank or banks in the state
53 designated by the trust.

54 3. The moneys in such accounts shall be paid out on checks of the
55 trust upon requisition by the chair or such officer or officers as the

1 trust may authorize to make such requisitions, or pursuant to a bond
2 resolution or trust indenture.

3 4. Any moneys on deposit in the accounts of the trust not required for
4 immediate expenditure shall be invested in obligations in which a muni-
5 cipality may be authorized to invest in accordance with section eleven
6 of the general municipal law, provided, however, that such funds shall
7 not be invested in instruments commonly known as repurchase agreements.
8 The trust shall have the power, notwithstanding the provisions of this
9 section, to contract with the holders of any of its bonds as to the
10 custody, collection, securing, investment and payment of any money of
11 the trust or any money held in trust or otherwise for the payment of
12 bonds or in any way to secure bonds, and to carry out any such contract
13 notwithstanding that such contract may be inconsistent with the other
14 provisions of this article. Money held in trust or otherwise for the
15 payment of bonds or in any way to secure bonds and deposits of such
16 money may be secured in the same manner as money of the trust, and all
17 banks and trust companies are authorized to give such security for such
18 deposits.

19 § 615. Bonds legal for investment and deposit. The bonds of the trust
20 are hereby made securities in which all public officers and bodies of
21 the state and all public corporations, municipalities and municipal
22 subdivisions, all insurance companies and associations and other persons
23 carrying on an insurance business, all banks, bankers, trust companies,
24 savings banks and savings associations including savings and loan asso-
25 ciations, building and loan associations, investment companies and other
26 persons carrying on a banking business, all administrators, conserva-
27 tors, guardians, executors, trustees and other fiduciaries, and all
28 other persons whatsoever who are now or may hereafter be authorized to
29 invest in bonds or in other obligations of the state, may properly and
30 legally invest funds, including capital, in their control or belonging
31 to them. The bonds are also hereby made securities which may be deposit-
32 ed with and may be received by all public officers and bodies of the
33 state and all municipalities and public corporations for any purpose for
34 which the deposit of bonds or other obligations of the state is now or
35 may hereafter be authorized.

36 § 616. Tax exemption and tax contract by the state. 1. It is hereby
37 determined that the creation of the trust and the carrying out of its
38 corporate purposes is in all respects for the benefit of the people of
39 the state of New York and is a public purpose. Accordingly, the trust
40 shall be regarded as performing an essential governmental function in
41 the exercise of the powers conferred upon it by this article, and the
42 trust shall not be required to pay any fees, taxes, special ad valorem
43 levies or assessments of any kind, including, but not limited to, fran-
44 chise taxes, sales taxes or other taxes, upon or with respect to any
45 property owned by it or under its jurisdiction, control or supervision,
46 or upon the uses thereof, or upon or with respect to its activities or
47 operations in furtherance of the powers conferred upon it by this arti-
48 cle, or upon or with respect to any fares, tolls, rentals, rates, charg-
49 es, fees, revenues or other income received by the trust.

50 2. Any bonds issued pursuant to this article together with the income
51 therefrom shall at all times be exempt from taxation.

52 3. The state hereby covenants with the purchasers and with all subse-
53 quent holders and transferees of bonds issued by the trust pursuant to
54 this article, in consideration of the acceptance of and payment for the
55 bonds, that the bonds of the trust issued pursuant to this article and
56 the income therefrom and all revenues, monies, and other property

1 pledged to pay or to secure the payment of such bonds shall at all times
2 be free from taxation.

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

20 2. Wherever a notice of claim is served upon the trust, it shall have
21 the right to demand an examination of the claimant relative to the
22 occurrence and extent of the injuries or damages for which claim is
23 made, in accordance with the provisions of section fifty-h of the gener-
24 al municipal law.

25 3. The trust may require any person presenting for settlement an
26 account or claim for any cause whatsoever against the trust to be sworn
27 before a member of the board, counsel or an attorney, officer or employ-
28 ee thereof designated for such purpose, concerning such account or claim
29 and when so sworn, to answer orally as to any facts relative to such
30 account or claim. The trust shall have power to settle or adjust any
31 claims in favor of or against the trust.

32 4. The rate of interest to be paid by the trust upon any judgment for
33 which it is liable, other than a judgment on bonds, shall not exceed the
34 rate of interest on judgments and accrued claims against municipal
35 authorities as provided in the general municipal law. Interest on
36 payments of principal or interest on any bonds in default shall accrue
37 at the rate specified in the general municipal law until paid or other-
38 wise satisfied.

39 5. The venue of every action, suit or special proceeding brought
40 against the trust shall be laid in the county of New York.

41 § 618. Civil service and pension system membership. 1. The trust, for
42 the purpose of administering the civil service law, shall be subject to
43 the provisions of the civil service law and the rules of the city
44 department of citywide administrative services or any successor acting
45 as the municipal commission of the city. The president of the trust
46 shall be empowered to act for the trust in all matters relating to
47 compliance with this subdivision.

48 2. With respect to persons employed by the NYCHA on the effective date
49 of this section, the trust and the NYCHA shall be deemed to be the same
50 public employer only for purposes of transfer of employment under the
51 civil service law, which may be made only with the approval of the NYCHA
52 CEO and the president of the trust. No civil service right of an employ-
53 ee of the NYCHA employed on the effective date of this article shall be
54 lost, impaired or affected by reason of the enactment of this section
55 into law.

1 3. Any person on an eligible list for a position with the NYCHA shall
2 continue to hold such position on such list and shall be entitled to the
3 same civil service rights. The trust shall continue to use any new or
4 existing civil service lists promulgated by the department of citywide
5 administrative services until such time as successor titles are estab-
6 lished. Employees of the trust shall have the same rights and benefits
7 as employees of the NYCHA.

8 4. Any officer or employee of the NYCHA who is transferred to the
9 trust pursuant to this section and who at the time of such transfer was
10 a member of the New York city employees' retirement system shall contin-
11 ue to be a member of such system as long as he or she or they continues
12 in such service, and shall continue to have all the rights, privileges
13 and obligations of membership in such system. Employment by the trust
14 shall constitute city-service for the purposes of chapter one of title
15 thirteen of the administrative code of the city of New York.

16 § 619. Collective negotiation. 1. Except as otherwise provided by this
17 article, the trust, by means of a written determination of the president
18 of the trust transmitted to the mayor within one hundred twenty days of
19 the effective date of this section, may elect to have the New York city
20 collective bargaining law apply to the trust, subject to approval of the
21 mayor. Such law shall apply to the trust pending such determination and
22 approval. In the event that the trust does not so elect or the mayor
23 does not approve the election, the state public employment relations
24 board shall have exclusive jurisdiction for the purpose of administering
25 the provisions of article fourteen of the civil service law, and the
26 provisions of section two hundred twelve of the civil service law shall
27 not be applicable to the trust.

28 2. In the event that the trust elects to have the New York city
29 collective bargaining law apply to the trust, for the purpose of article
30 fourteen of the civil service law and the New York city collective
31 bargaining law, as applicable, the trust, acting by and through its
32 president, shall be deemed to be the public employer and as such shall
33 negotiate with and enter into written agreements with employee organiza-
34 tions representing the staff of the trust that have been certified or
35 recognized under such article. In carrying on such negotiations, the
36 president of the trust may consult with and seek assistance from the
37 city office of labor relations and NYCHA. The president of the trust
38 shall consult with the appropriate public employee organization on the
39 establishment of, and bargain all terms and conditions of, any new
40 titles established for the trust which have a community of interest with
41 titles already represented by the public employee organization which
42 presently has representation rights for those titles for NYCHA or for
43 the city. Any such titles for which terms and conditions are bargained
44 pursuant to this subdivision shall be deemed to be successor titles
45 within the meaning of applicable law and, so long as the responsibil-
46 ities of employees in these titles are reasonably related to the respon-
47 sibilities of employees currently represented by a public employee
48 organization, shall be accreted to the appropriate bargaining certif-
49 icates for which such public employee organization shall be voluntarily
50 recognized as the bargaining agent under procedures acceptable to the
51 office of collective bargaining or the state public employment relations
52 board, as applicable.

53 § 620. Application of state and local human rights laws. Notwith-
54 standing any provision of law to the contrary, article fifteen of the
55 executive law and title eight of the administrative code of the city of
56 New York shall apply to the trust.

1 § 621. Limited liability. 1. As used in this section, the term
2 "employee" shall mean the members of the board, president, officers,
3 employees, or a former employee, his or her estate or judicially
4 appointed personal representative.

5 2. Neither the members of the board nor any officers or employee of
6 the trust acting on behalf thereof, while acting within the scope of
7 such person's authority, shall be subject to any liability resulting
8 from carrying out any of the powers expressly given in this article.

9 3. At the request of the employee, and upon compliance by the employee
10 with the provisions of this section, the trust shall provide for the
11 defense of an employee in any civil action or proceeding in any state or
12 federal court, arising out of any alleged act or omission which the
13 trust finds occurred while the employee was acting within the scope of
14 his or her public employment and in the discharge of his or her public
15 duties and was not in violation of any rule or regulation of the trust
16 at the time the alleged act or omission occurred. This duty to provide
17 for a defense and indemnification shall not arise where such civil
18 action or proceeding is brought by or on behalf of the trust against the
19 employee.

20 4. The trust shall indemnify and hold harmless its employees in the
21 amount of any civil judgment obtained against such employees in any
22 state or federal court, or in the amount of any settlement of a claim
23 approved by the trust provided that the act or omission from which such
24 judgment or settlement arose occurred while the employee was acting
25 within the scope of his or her public employment and in the discharge of
26 his or her public duties and was not in violation of any rule or regu-
27 lation of the trust at the time the alleged damages were sustained. The
28 duty to indemnify and hold harmless prescribed by this section shall not
29 arise where the injury or damage resulted from an intentional wrongdo-
30 ing, or recklessness on the part of the employee. Nothing in this
31 section shall authorize the trust to indemnify or hold harmless an
32 employee with respect to punitive or exemplary damages, fines or penal-
33 ties.

34 5. The duty to defend and indemnify and hold harmless prescribed by
35 this section shall be conditioned upon (a) delivery by the employee to
36 the president or general counsel of the trust at the office of the trust
37 of the original or a copy of any summons, complaint, claim, process,
38 notice, demand or pleading within ten days after the employee is served
39 with such document, and (b) the full cooperation of the employee in the
40 defense of such action or proceeding and in defense of any action or
41 proceeding against the trust based upon the same act or omission, and in
42 the prosecution of any appeal. Such delivery shall be deemed a request
43 by the employee that the trust provide for his or her defense pursuant
44 to this section. In the event that the trust shall assume an employee's
45 defense and thereafter the employee fails or refuses to cooperate in the
46 formation or presentation of his or her defense, the court shall permit
47 the trust to withdraw its representation ten days after giving written
48 notice to the employee of its intention to discontinue such represen-
49 tation.

50 6. In the event that the act or omission upon which the court proceed-
51 ing against the employee is based was or is also the basis of a disci-
52 plinary proceeding by the trust against the employee, representation and
53 indemnification by the trust, as set forth in this section, may be with-
54 held (a) until such disciplinary proceeding has been resolved, and (b)
55 unless the resolution of the disciplinary proceeding exonerated the
56 employee as to such act or omission.

1 7. Subject to the conditions set forth in this section, such employee
2 shall be entitled to representation by the general counsel of the trust
3 or by any attorney or attorneys designated by the general counsel,
4 provided, however, that the employee shall be entitled to be represented
5 by private counsel of his or her choice in any civil action or proceed-
6 ing whenever the trust determines that representation would be inappro-
7 propriate, or whenever a court, upon appropriate motion or otherwise by a
8 special proceeding, determines that a conflict of interest exists and
9 that the employee is entitled to be represented by private counsel of
10 the employee's choice. The general counsel of the trust shall notify the
11 employee in writing of such determination that the employee is entitled
12 to be represented by private counsel. Provided, however, that the trust
13 may require, as a condition to payment of the fees and expenses of such
14 representation, that appropriate groups of such employees be represented
15 by the same counsel. Reasonable attorneys' fees and litigation expenses
16 shall be paid by the trust to such private counsel from time to time
17 during the pendency of a civil action or proceeding.

18 8. Any dispute with respect to representation of multiple employees by
19 a single counsel or the reasonableness of attorneys' fees or the amount
20 of litigation expenses shall be resolved by the court upon motion or by
21 way of a special proceeding.

22 9. The benefits of this section shall inure only to employees as
23 defined in this section and shall not enlarge or diminish the rights of
24 any other party nor shall any provision of this section be construed to
25 affect, alter or repeal any provision of the workers' compensation law.

26 10. The provisions of this section shall not be construed in any way
27 to impair, alter, limit or modify the rights and obligations of any
28 insurer under any policy of insurance.

29 11. Except as otherwise specifically provided in this section, the
30 provisions of this section shall not be construed in any way to impair,
31 alter, limit, modify, abrogate or restrict any immunity available to or
32 conferred upon any unit, entity, member, officer or employee of the
33 trust, or any right to defense or indemnification provided for any
34 member, officer or employee by, in accordance with, or by reason of, any
35 other provision of state, federal or local law or common law.

36 12. Every action or proceeding instituted pursuant to the provisions
37 of this section shall be commenced pursuant to section six hundred
38 seventeen of this article, and subject to any condition or limitation
39 set forth in such section.

40 13. The provisions of this section shall apply to the actions and
41 proceedings set forth herein notwithstanding any inconsistent provisions
42 of state or local law.

43 § 622. Audit and annual reports. Beginning in the year two thousand
44 twenty-two and every year thereafter, the trust shall, within one
45 hundred twenty days of the end of the city's fiscal year, submit to the
46 mayor of the city and the NYCHA board a report on its operations during
47 such fiscal year. An annual audit of the trust shall be conducted by an
48 independent certified public accountant, and the trust's independently
49 audited financial statements shall be included in this report. The
50 report shall also detail the extent of completion of all projects for
51 development, design, construction, reconstruction, improvement, rehabil-
52 itation, repairing and operation of housing facilities, including, by
53 project, identified shortfalls in schedule performance and providing
54 explanation for such shortfalls. Such report shall detail the extent of
55 completion as existed on the last day of the city's fiscal year. Such
56 report shall also include a description of each alternative project

1 delivery contract, information regarding the procurement process for
2 each such alternative project delivery contract including the list of
3 responding entities that demonstrated the general capability to perform
4 such alternative project delivery contract pursuant to paragraph (a) of
5 subdivision one of section six hundred ten of this article, the total
6 cost of each alternative project delivery contract, an explanation of
7 the estimated savings attributable from the alternative project delivery
8 contract structure used, and the participation rate of and total dollar
9 value of monies paid to minority and women owned business enterprises
10 under such contract. The trust shall transmit the portion of such report
11 relating to alternative project delivery contracts to the governor, the
12 temporary president of the senate and the speaker of the assembly.

13 § 623. Jurisdiction over trust. 1. The trust shall not be deemed a
14 "covered organization" as defined in the New York state financial emer-
15 gency act for the city of New York.

16 2. The department of investigation of the city shall be authorized to
17 conduct investigations relating to the trust pursuant to chapter thir-
18 ty-four of the New York city charter.

19 3. The comptroller of the city, or his or her legally authorized
20 representative, is hereby authorized and empowered from time to time to
21 examine the books and accounts of the trust including its receipts,
22 disbursements, contracts, reserve funds, sinking funds, investments, and
23 any other matters relating to its financial standing.

24 4. The trust shall not be deemed a "local authority" or a "state
25 authority" for purposes of the public authorities law, and shall not
26 otherwise be subject to provisions of such law with respect to public
27 authorities, except as may be specifically provided for by this article.

28 § 624. Effect of inconsistent provisions. Insofar as the provisions of
29 this article are inconsistent with the provisions of any other law,
30 general, special or local or of the New York city charter or any local
31 law, ordinance or resolution of the city, the provision of this article
32 shall be controlling, provided that nothing contained in this section
33 shall be held to supplement or otherwise expand the powers or duties of
34 the trust otherwise set forth in this article.

35 § 625. Severability. If any provision of this article or its applica-
36 tion to any person or circumstance is held unconstitutional or invalid,
37 in whole or in part, by any court, such holding of unconstitutionality
38 or invalidity shall in no way affect or impair any other provision of
39 this article or the application of any such provision to any other
40 person or circumstance, and to this end the provisions of this article
41 are severable.

42 § 2. Paragraph b of subdivision 3 of section 13-101 of the administra-
43 tive code of the city of New York, as amended by chapter 16 of the laws
44 of 1997, is amended to read as follows:

45 b. Service as a paid employee of the triborough bridge authority, the
46 Henry Hudson parkway authority, the Marine parkway authority, the New
47 York city tunnel authority, the New York city parkway authority, the New
48 York city housing authority, the New York city public housing preserva-
49 tion trust, the triborough bridge and tunnel authority, the New York
50 city transit authority, the New York city housing development corpo-
51 ration, the New York city health and hospitals corporation, the New York
52 city off-track betting corporation, the New York city school
53 construction authority, the New York city municipal water finance
54 authority, the New York city water board, the transit construction fund,
55 the New York city transitional finance authority, the New York city

1 sports authority and the New York city rehabilitation mortgage insurance
2 corporation shall constitute city-service as herein defined.

3 § 3. Paragraph 1 of subdivision c of section 13-133 of the administra-
4 tive code of the city of New York, subparagraph (C) as added by chapter
5 738 of the laws of 1988, subparagraphs (D) and (E) as added by chapter
6 609 of the laws of 1995, subparagraph (F) as added by chapter 16 of the
7 laws of 1997, and subparagraph (G) as added by chapter 3 of the laws of
8 2013, is amended to read as follows:

9 (1) (A) The comptroller shall make monthly payments, in twelve equal
10 installments, with respect to obligations which the city incurs to pay
11 sums to the retirement system.

12 (B) The New York city health and hospitals corporation shall make
13 monthly payments, in twelve equal installments, with respect to obli-
14 gations which it incurs to pay sums to the retirement system.

15 (C) The New York city school construction authority shall make monthly
16 payments, in twelve equal installments, with respect to obligations
17 which it incurs to pay sums to the retirement system.

18 (D) The New York city municipal water finance authority shall make
19 monthly payments, in twelve equal installments, with respect to obli-
20 gations, if any, which it incurs to pay sums to the retirement system.

21 (E) The New York city water board shall make monthly payments, in
22 twelve equal installments, with respect to obligations, if any, which it
23 incurs to pay sums to the retirement system.

24 (F) The New York city transitional finance authority shall make month-
25 ly payments, in twelve equal installments, with respect to obligations
26 which it incurs to pay sums to the retirement system.

27 (G) The New York city public housing preservation trust shall make
28 monthly payments, in twelve equal installments, with respect to obli-
29 gations which it incurs to pay sums to the retirement system.

30 (H) Where a responsible obligor (as defined in paragraph ten of subdivi-
31 sion a of section 13-638.2 of this title) is required to make payments
32 to the retirement system pursuant to applicable provisions of law in
33 fiscal year two thousand twelve--two thousand thirteen, and in any
34 fiscal year thereafter, and the provisions of this subdivision or the
35 provisions of any other applicable law do not otherwise specifically
36 require such responsible obligor to make such payments by a particular
37 date or dates during such fiscal year, such responsible obligor shall
38 make such payments either (i) in total on or before January first of
39 such fiscal year, or (ii) in twelve equal monthly installments, as
40 determined by the actuary, with each monthly installment to be paid on
41 or before the last day of each month.

42 § 4. This act shall take effect on the sixtieth day after it shall
43 have become a law, provided that any public officer or employee, includ-
44 ing but not limited to the mayor of the city of New York and the chief
45 executive officer of the New York city housing authority, is authorized
46 to take any action that is necessary for the timely implementation of
47 this act prior to its effective date.