

# STATE OF NEW YORK

7273

## IN SENATE

January 15, 2020

Introduced by Sen. JACKSON -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public authorities law, in relation to establishing the downstate New York power authority, and providing for its powers and duties

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

1 Section 1. Article 5 of the public authorities law is amended by  
2 adding a new title 1-C to read as follows:

### TITLE 1-C

#### DOWNSTATE NEW YORK POWER AUTHORITY

#### Section 1022. Short title.

1022-a. Definitions.

1022-b. Downstate New York power authority.

1022-c. Downstate New York power authority service area; extension of service area.

1022-d. Powers and duties of the authority.

1022-e. Acquisition of property, including the exercise of the power of eminent domain.

1022-f. Deposit and investment of moneys of the authority.

1022-g. Conflicts of interest.

1022-h. Sale of surplus power.

1022-i. Audit and annual reports.

1022-j. Bonds, notes and other obligations of the authority.

1022-k. State and municipalities not liable on bonds or notes or other obligations.

1022-l. Agreement of the state.

1022-m. Exemption of the authority from taxation.

1022-n. Actions against the authority.

1022-o. Equal employment opportunity.

1022-p. Limitation of liability; indemnification.

1022-q. Website.

1022-r. Prevailing wage.

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

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1 1022-s. Periodic review by legislature.

2 1022-t. Severability.

3 § 1022. Short title. This title shall be known and may be cited as the  
4 "downstate New York power authority act".

5 § 1022-a. Definitions. As used or referred to in this title, unless a  
6 different meaning clearly appears from the context:

7 1. "Acquire" means, with respect to any right, title or interest in or  
8 to any property, either the act of taking by the exercise of the power  
9 of eminent domain, or the acquisition by purchase or otherwise.

10 2. "Act" means the downstate New York power authority act, being this  
11 title.

12 3. "Authority" means the downstate New York power authority estab-  
13 lished by section one thousand twenty-two-b of this title.

14 4. "Commission" means the public service commission.

15 5. "Comptroller" means the state comptroller.

16 6. "Downstate service area" or "service area" means the counties of  
17 Bronx, Kings, New York, Richmond, Queens, Dutchess, Putnam, Sullivan,  
18 Orange, Rockland, Ulster, and Westchester.

19 7. "Downstate utility corporation" means any private gas corporation,  
20 electric corporation, or combined gas and electric corporation, as such  
21 terms are defined in section two of the public service law, that has a  
22 portion of its service territory within the downstate service area. This  
23 shall not include the Long Island power authority, the public benefit  
24 corporation created by section one thousand twenty-c of the public  
25 authorities law, as added by chapter five hundred seventeen of the laws  
26 of nineteen eighty-six, or any municipality that provides gas or elec-  
27 tric service.

28 8. "Federal government" means the United States of America and any  
29 agency or instrumentality, corporate or otherwise, of the United States  
30 of America.

31 9. "Final determination" or "finally determined" means a judicial  
32 decision (a) by the highest court of competent jurisdiction, or (b) by a  
33 court of competent jurisdiction from which no appeal has been taken and  
34 the time within which to appeal has expired.

35 10. "Municipality" means any county, city, town, village, municipal  
36 corporation, school district or other political subdivision of the  
37 state, including any agency, authority or public corporation of the  
38 state or any of the foregoing, or any combination thereof, other than  
39 the authority.

40 11. "Property" means the power distribution system or systems of the  
41 authority, whether completed facilities or projects in construction,  
42 whether situated within or without the territorial limits of the service  
43 area, including the plants, works, structures, poles, lines, conduits,  
44 mains, systems, instrumentalities or parts thereof and appurtenances  
45 thereto, lands, franchises and interest in land, including lands under  
46 water and riparian rights, space rights and air rights, contract rights,  
47 substations, and distribution facilities, or any other property inci-  
48 dental to and included in such system or part thereof, and any improve-  
49 ments, extensions or betterments. The term "property" shall also include  
50 any and all interests in real property less than full title, such as  
51 easements, rights of way, uses, leases, licenses and all other incorpo-  
52 real hereditaments and every estate, interest or right, legal or equita-  
53 ble, including terms for years and liens thereon by way of judgments,  
54 mortgages or otherwise, and also all claims for damages related to such  
55 real estate.

12. "Revenues" means all rates, rents, fees, charges, payments and other income and receipts derived by the authority from the operation of the properties of the authority other than the proceeds of the sales of its securities, including, but not limited to, investment proceeds and proceeds of insurance, condemnation, and sales or other disposition of assets, together with all federal, state or municipal aid.

13. "Security" means any bond, note or other obligation issued by the authority.

14. "State" means the state of New York.

15. "State agency" means any board, authority, agency, department, commission, public corporation, body politic or instrumentality of the state.

16. "Trustees" means the board of trustees of the authority.

§ 1022-b. Downstate New York power authority. 1. A corporation known as the downstate New York power authority is hereby established and charged with the duties and having the powers provided in this title. The authority shall be a state authority, a body corporate and politic constituting a public benefit corporation, a political subdivision of the state, exercising governmental and public powers, perpetual in duration, capable of suing and being sued and having a seal, and which shall have the powers and duties enumerated in this title, together with such others as may be conferred upon it by law.

2. Trustees. (a) The authority shall consist of a board of nine trustees, who shall be elected from districts established by the legislature. Each elected trustee shall be a resident of the district from which he or she is elected. No person who is an elected or appointed official of the state or any municipality or any agency or instrumentality thereof, shall be qualified to serve as an elected trustee. Each trustee shall hold office until his or her successor has been elected. In the event of a vacancy occurring in the office of a trustee by death, resignation or otherwise, a successor shall be chosen to hold office for the unexpired term in the manner prescribed by the election law.

(b) Within one hundred eighty days, and each tenth year thereafter, the legislature shall establish nine districts, which shall be equal in population as determined by the last federal decennial census.

(c) Such trustees shall be elected in elections conducted by the board of elections pursuant to applicable provisions of the election law. The first such election shall be held on the first Tuesday in November two thousand twenty, and the trustees so elected shall take office on January first, two thousand twenty-one. At such election three trustees shall be elected for a term of one year, three shall be elected for a term of three years, and three shall be elected for a term of five years. Each such term shall end December thirty-first of the last year thereof. No later than July first, two thousand twenty and each subsequent year in which reapportionment or readjustment of such districts takes place, the state board of elections shall determine by lot which such trustees shall be elected for which terms. Thereafter, three trustees shall be elected on the first Tuesday in November of each year to replace the trustees whose terms will expire at the end of the year, for terms of three years each except that all trustees shall be elected at the first election held after a reapportionment or readjustment of such districts. No political party shall be entitled to nominate candidates for the office of trustee at any such election.

3. The trustees shall serve without compensation but shall be entitled to reimbursement of their actual and necessary expenses incurred in the performance of their official duties, as may be authorized by the trus-

tees, in each case upon appropriate documentation by the submitting trustee. No trustee or any entity, the majority of which is owned or controlled by any trustee, shall receive any additional compensation from the authority or be employed by the authority in any other capacity by whatever means.

4. Five trustees shall constitute a quorum for the transaction of business, and the affirmative vote of five trustees at a meeting shall be necessary to the validity of any resolution, order or determination. The trustees, in by-laws or by resolution, may allow for attendance at a meeting of the trustees by speaker phone or any other electronic means by which all meeting participants can hear one another.

5. The trustees shall appoint an executive committee of not less than three trustees and shall delegate such duties and responsibilities of the trustees to the executive committee as it may determine from time to time, except that the trustees shall not delegate to the executive committee the power to authorize the issuance of securities. The trustees may appoint such additional committees with such duties and responsibilities as they may determine from time to time.

6. (a) The trustees shall from time to time select such officers and employees, including a chief executive officer and such engineering, management and legal officers, and other professional employees, including but not limited to accounting, planning, construction, finance, appraisal, banking and trustee services, as the trustees may require for the performance of their duties and shall prescribe the duties and compensation of each such officer and employee. Such compensation shall be reasonable and commensurate to the duties of the position of such officer or employee.

(b) If any employees are hired as a consequence of an acquisition of the assets of a downstate utility corporation, they shall be hired subject and be entitled to all applicable provisions of (i) any existing contract or contracts with labor unions and (ii) all existing pension or other retirement plans. Notwithstanding the provisions of any general, special or local law, the board may determine that such class of employees of the authority may elect to become members of the New York state employees' retirement system on the basis of compensation payable to them by the authority.

7. (a) The authority shall be subject in all respects to the general supervision and jurisdiction of the public service commission in the same manner as an electric corporation is subject to the jurisdiction of the public service commission under the public service law.

(b) The authority shall not make any commitment, enter into any agreement nor incur any indebtedness unless prior approval has been received from the New York state public authorities control board pursuant to article one-A of this chapter.

(c) In addition to all of the powers of the public service commission, prior to acquiring any property and commencing operations, the authority shall secure an order from the commission authorizing such acquisition and commencement. The commission shall have the power to deny the authority's application to acquire property and commence operations. The authority shall comply with any and all requests for documents, materials, and testimony that the commission may seek. The commission shall consider, including but not limited to, the following factors before issuing an order: ratepayer impacts; system reliability; environmental impacts, conservation of energy resources; preservation or creation of economic opportunities; power efficiency and availability; public health and welfare; and any other factor it deems relevant. The authority

1 granted pursuant to this paragraph shall terminate upon commencement of  
2 distribution of power.

3 8. The authority and its corporate existence shall continue until  
4 terminated by law, provided, however, that no such law shall take effect  
5 so long as the authority shall have securities outstanding, unless  
6 adequate provision has been made for the payment thereof.

7 9. In the event that the authority does not commence delivering elec-  
8 tric power within ten years of the effective date of this title, the  
9 authority shall cease to exist and the provisions of this title shall be  
10 of no further force and effect, subject to the terms of any bonds, notes  
11 or other debt obligations then outstanding.

12 § 1022-c. Downstate New York power authority service area; extension  
13 of service area. 1. The service area of the downstate New York power  
14 authority shall embrace the service territory of any downstate utility  
15 corporation located within the downstate service area.

16 2. The service area of the downstate New York power authority may be  
17 extended at any time to include additional territory by the trustees in  
18 accordance with the following procedure, provided however, the procedure  
19 does not conflict with any rule or regulation of the public service  
20 commission or any other law. Whenever the trustees determine that the  
21 territory included within the service area should be extended, consist-  
22 ent with the provisions of this title, the trustees shall adopt a resol-  
23 ution proposing the additional territory. The trustees shall fix the  
24 dates, hours and places for three public hearings before such trustees  
25 upon the question of such extension and cause notice thereof and of the  
26 additional territory to be included within the service area to be  
27 published in two newspapers of general circulation in the county not  
28 less than twenty nor more than thirty days before such date. At least  
29 one of such hearings shall be held within the bounds of the proposed  
30 additional territory. At such time the trustees shall hear all persons,  
31 taxpayers or officials who may wish to be heard and shall finally deter-  
32 mine the additional territory, if any, to be included in such extension.  
33 Such determination shall be made by resolution of the trustees adopted  
34 by a two-thirds vote of all trustees then in office. A map of the  
35 service area, as extended, shall thereupon be filed in the office of the  
36 county clerk of the affected counties.

37 § 1022-d. Powers and duties of the authority. The powers conferred by  
38 this title shall be exercised by the trustees, subject to the terms of  
39 this title. In the exercise of those powers, either directly or through  
40 its officers and employees, the trustees may do the following things,  
41 among others, and the following list of powers shall not be deemed  
42 complete or exclusive, or to deny the existence of other powers, whether  
43 similar or different, so long as they are reasonably necessary for  
44 accomplishing the purposes declared and indicated in this title:

45 1. To make and alter by-laws for the regulation of its affairs and  
46 conduct of its activities, to schedule annual, regular and special meet-  
47 ings of the trustees, as the conduct of the business of the authority  
48 may warrant, and to adopt and amend an official seal;

49 2. To develop, acquire, construct, reconstruct, rehabilitate and  
50 improve facilities for the distribution of electric power or any  
51 connected service;

52 3. To determine the location, type, size, construction, lease,  
53 purchase, ownership, acquisition, use and operation of any facilities or  
54 other structure or property, within or without the service area;

55 4. To investigate, implement and integrate, to the fullest extent  
56 practicable and economically feasible, such resource conservation and



1 energy efficiency measures and equipment intended to reduce power demand  
2 and usage, utilize green technologies, alternative and renewable fuels,  
3 net metering, crediting mechanisms for distributed energy resources and  
4 demand response programs, all as integral elements in its investments in  
5 new equipment for distribution of power, and in its marketing and sale  
6 of electricity to consumers;

7 5. To acquire on behalf of and in the name of the authority, whether  
8 by agreement with and purchase from the owner or owners, or by arbi-  
9 tration, or within the service area by eminent domain, pursuant to the  
10 procedures set forth in the eminent domain procedure law, or by lease,  
11 the whole or any part of any existing facilities or of any other proper-  
12 ty to be used in connection with power distribution by the authority as  
13 set out in this title; provided, however, that the authority shall not  
14 acquire real property of a municipality or a political subdivision of  
15 the state unless such municipality or political subdivision shall  
16 consent thereto; and provided further that the authority shall not  
17 acquire by the exercise of eminent domain any transmission or generation  
18 facilities; and provided further that the authority shall not acquire by  
19 the exercise of eminent domain any facilities for distribution operating  
20 at a voltage in excess of twenty-two thousand volts from any person,  
21 corporation or association, public or private, engaged in the business  
22 of distribution and sale of electricity to ultimate customers unless the  
23 authority is unable to acquire by contract with the owners or operators  
24 thereof, the right to use such facilities on just, reasonable and non-  
25 discriminatory terms. In the exercise of the power of eminent domain, as  
26 provided in this subdivision, the property being acquired shall be  
27 deemed, when so determined by the authority, to be for a public use;

28 6. To distribute electric power and any connected services within the  
29 service area, to fix progressive rates and charges for the furnishing or  
30 rendition of electric power or of any connected service, and to collect  
31 revenues. Provided however, that prior to the first sale of electric  
32 power or any connected service, the authority shall promulgate regu-  
33 lations granting to customers the protections afforded by article two of  
34 the public service law and section one hundred thirty-one-s of the  
35 social services law;

36 7. To maintain, operate and manage, and contract for the maintenance,  
37 operation and management of properties of the authority;

38 8. To apply to the appropriate agencies and officials of the federal,  
39 state and local governments for such licenses, permits or approvals for  
40 its plans and projects as it may deem necessary or advisable, and upon  
41 such terms and conditions as it may deem appropriate to accept, in its  
42 discretion, such licenses, permits or approvals as may be tendered to it  
43 by such agencies and officials;

44 9. To enter upon such lands, waters or premises as in the judgment of  
45 the authority shall be necessary for the purpose of making surveys,  
46 soundings, borings and examinations to accomplish any purpose authorized  
47 by this title, the authority being liable only for actual damages done;

48 10. To enter into cooperative agreements with other authorities, muni-  
49 cipalities, utility companies, individuals, firms or corporations, and  
50 the dominion of Canada and its political subdivisions, for the intercon-  
51 nection of facilities and the exchange or interchange of electric power  
52 or connected services, upon such terms and conditions as shall be deter-  
53 mined to be reasonable;

54 11. To execute contracts, borrow money, issue bonds, notes and other  
55 obligations as provided in section one thousand twenty-two-i of this

1 title, and sell the same in such amounts and at such prices, interest  
2 rates and other financial terms as may be determined by the trustees;

3 12. To enter into agreements to purchase power from the power authori-  
4 ty of the state of New York, the state, any state agency, any munici-  
5 pality, any private entity or any other available source at such price  
6 or prices as may be negotiated, including the power to enter into any  
7 agreement or any negotiation for the purchase of power from the dominion  
8 of Canada, or any political subdivision, public authority or private  
9 corporation therein;

10 13. To make any plans, studies or investigations which it may deem  
11 necessary, convenient or desirable to enable it effectually to carry out  
12 the provisions of this title; and

13 14. To do whatever may be necessary to give effect to the purposes of  
14 this title, and in general to have and exercise all other powers neces-  
15 sary or incidental to the purposes of this title.

16 § 1022-e. Acquisition of property, including the exercise of the power  
17 of eminent domain. 1. The legislature hereby expressly finds and deter-  
18 mines:

19 (a) The acquisition by the authority, through purchase or the exercise  
20 of the power of eminent domain, of either the securities or assets of a  
21 downstate utility corporation whichever is less expensive for the rate-  
22 payers, as the authority may determine will be just to the ratepayers in  
23 the service area, is the most appropriate means of dealing with the  
24 emergency involving the economy, health and safety of the residents and  
25 the industry and commerce in the service area, notwithstanding the fact  
26 that such downstate utility corporation presently may be devoted to a  
27 public use, since the public use of such property by the authority is  
28 hereby deemed to be superior to the public use of such property by any  
29 other person, association, or corporation.

30 (b) The authority, prior to exercising its power of eminent domain to  
31 acquire the stock or assets of a downstate utility corporation, shall  
32 enter into negotiations with such downstate utility corporation for the  
33 purpose of acquiring such stock or assets upon such terms as the author-  
34 ity, in its sole discretion, determines will result in rates equal to or  
35 less than the rates which would result if such downstate utility corpo-  
36 ration were to continue in operation.

37 (c) The compensation paid by the authority to a downstate utility  
38 corporation shall be just to the ratepayers in the service area who must  
39 pay such compensation.

40 (d) If the authority determines that it is the stock of a downstate  
41 utility corporation that should be taken, the proper measure of damages  
42 shall be the fair market value thereof as evidenced by the price of such  
43 stock on the exchange on which it is traded on the valuation date since  
44 there is an established market for such stock that is reflective of its  
45 value. In no event, however, shall consequential or severance damages be  
46 awarded if control of such downstate utility corporation shall have been  
47 taken by the authority.

48 (e) If the authority determines that it is the assets of a downstate  
49 utility corporation that should be taken, fair market value would not  
50 constitute just compensation to such downstate utility corporation since  
51 there is an insufficient market in the usual sense for its assets to  
52 ascertain the value thereof from the market. In determining the compen-  
53 sation payable for such assets, there shall be taken into consideration  
54 the capitalization of such downstate utility corporation's expected  
55 future earnings.

1 (f) Neither consequential nor severance damages are proper if the  
2 authority condemns all the assets of a downstate utility corporation.

3 (g) Such an acquisition by the authority of the securities or assets  
4 of a downstate utility corporation serves the public purposes of assur-  
5 ing the provision of an adequate supply of gas and electricity in a  
6 reliable, efficient and economic manner and retaining existing commerce  
7 and industry in and attracting new commerce and industry to the service  
8 area, all of which are matters of state-wide concern.

9 2. In furtherance of the legislative findings and determinations set  
10 forth in subdivision one of this section, the authority is hereby  
11 authorized and empowered to acquire, through purchase or the exercise of  
12 the power of eminent domain, all or any part of the securities or assets  
13 of a downstate utility corporation, as the authority in its sole  
14 discretion may determine; provided, however, that prior to proceeding  
15 with any such acquisition under this title, the board of trustees shall  
16 determine, in its sole discretion based upon such engineering, financial  
17 and legal data, studies and opinions as it may deem appropriate, that  
18 the rates projected to be charged after such acquisition and for such  
19 reasonable period of time as the board of trustees may determine will  
20 not be higher than the rates projected to be charged by such downstate  
21 utility corporation during such period if such acquisition had not  
22 occurred.

23 3. The authority also is authorized and empowered, in its discretion,  
24 to make a tender offer or tender offers for all or any portion of the  
25 securities of a downstate utility corporation at such price or prices as  
26 the authority may determine to be appropriate; provided, however that  
27 such tender offer or tender offers, in the sole judgment of the authori-  
28 ty, will result in rates less than the rates which would result from  
29 continued operation by such downstate utility corporation.

30 (a) The authority shall make such offer or offers or any adjustment  
31 thereof prior to acquiring any such securities or any assets of a down-  
32 state utility corporation through the exercise of the power of eminent  
33 domain. The authority may pay for such securities in cash or by exchang-  
34 ing therefor the authority's bonds or a combination thereof.

35 (b) In the case of a tender offer in which a subsidiary of the author-  
36 ity acquires at least sixty-six and two-thirds percent of a downstate  
37 utility corporation's common stock, such subsidiary may merge with such  
38 downstate utility corporation and either continue in existence or  
39 dissolve, as it may determine.

40 (c) The provisions of section five hundred thirteen and article  
41 sixteen of the business corporation law and any other provisions of law  
42 relating to procedures in a corporate takeover, including without limi-  
43 tation chapter nine hundred fifteen of the laws of nineteen hundred  
44 eighty-five, shall not be applicable to the actions of the authority  
45 pursuant to this title.

46 (d) In determining whether acceptance of such a tender offer by the  
47 authority is in the best interests of a downstate utility corporation,  
48 the directors of such downstate utility corporation shall consider not  
49 only the dollar amount of such offer but the interests of employees,  
50 suppliers, ratepayers, creditors (including holders of such downstate  
51 utility corporation's debt securities), and the economy of the service  
52 area and the state.

53 4. The authority, should it determine, in its sole discretion, to  
54 acquire the stock or assets of a downstate utility corporation by the  
55 exercise of the power of eminent domain, shall not take title to nor  
56 possession of such stock or assets prior to a final determination of the



1 amount of compensation to be paid for such stock or assets nor prior to  
2 a determination by the authority, in its sole discretion that the taking  
3 of such stock or assets will result in rates less than the rates which  
4 would result from continued operation by such downstate utility corpo-  
5 ration. Notwithstanding the provisions of the eminent domain procedure  
6 law, the provisions of subdivisions five and six of this section shall  
7 apply to the acquisition of the stock or property of such downstate  
8 utility corporation by the power of eminent domain, provided however, to  
9 the extent the provisions herein do not supersede or conflict with the  
10 provisions of such law the provisions of such law shall apply.

11 5. Procedure for acquisition of a downstate utility corporation stock.

12 (a) In the event the authority determines to acquire the stock of a  
13 downstate utility corporation by the exercise of the power of eminent  
14 domain, having first entered into negotiations with such downstate util-  
15 ity corporation for the purchase of such stock, the authority need not  
16 hold any public hearing on its intention to condemn such stock or on the  
17 question of the public use of such action, such finding having been made  
18 by the legislature herein. The authority shall commence such acquisition  
19 by serving upon such downstate utility corporation and filing with the  
20 county clerk of the county in which the principal office of such down-  
21 state utility corporation is located a notice describing the stock being  
22 acquired, the valuation date, as determined by the authority, and such  
23 additional information as the authority may reasonably deem necessary to  
24 facilitate the process of condemnation and payment. The notice shall  
25 state that it is a notice of pendency of an acquisition proceeding and  
26 that the authority will elect whether or not to pay the amount of such  
27 award when it has been finally determined. The authority also shall  
28 cause a copy of such notice (i) to be served upon the stock transfer  
29 agent or agents designated by such downstate utility corporation for the  
30 transfer and registration of its stock and (ii) to be published in at  
31 least five successive issues of a daily newspaper of national circu-  
32 lation.

33 (b) Upon receipt of such notice, the stock transfer agent or agents,  
34 at the expense of the authority, shall forthwith serve upon each of the  
35 registered owners of such stock a copy of such notice. Service shall be  
36 deemed sufficient if mailed by certified or registered mail to the  
37 address of each such owner as shown on a downstate utility corporation's  
38 stock transfer books. Service of the notice upon the stock transfer  
39 agent or agents and its publication shall not be jurisdictional prereq-  
40 uisites to the validity of the taking. Failure to notify any owner of  
41 stock to be taken will not invalidate any proceedings brought hereunder  
42 or any title acquired by the authority.

43 (c) Upon filing of the notice described in paragraph (a) of this  
44 subdivision, the authority shall petition a special term of the supreme  
45 court in the judicial district in which such downstate utility corpo-  
46 ration has its principal office for the acquisition of the stock. Such  
47 petition shall be generally in the form prescribed by the eminent domain  
48 procedure law so far as consistent herewith.

49 (d) The supreme court in the district in which such downstate utility  
50 corporation has its principal office shall have exclusive jurisdiction  
51 to hear and determine all claims arising from the acquisition of stock  
52 by the exercise of the power of eminent domain and shall hear such  
53 claims without a jury and without referral to a referee or commission-  
54 ers. Notwithstanding the provisions of section nine hundred one of the  
55 civil practice law and rules, upon motion to the court by the authority,  
56 the condemnation proceeding for the acquisition of stock shall be main-

1 tained as a class action, pursuant to remaining provisions of article  
2 nine of the civil practice law and rules, and the owners of the stock  
3 shall be deemed a defendant class on the basis of the following express  
4 legislative findings:

5 (i) the class of such downstate utility corporation stock owners is so  
6 numerous that joinder of all members is impracticable;

7 (ii) the issue of valuation of such downstate utility corporation  
8 stock is common to all such downstate utility corporation stock owners  
9 and there are questions of law or fact common to the members of such  
10 class which predominate over any questions affecting only individual  
11 members;

12 (iii) the claims or defenses, if any, of any representative owner of  
13 such downstate utility corporation stock to acquisition thereof by the  
14 authority are typical of the claims or defenses of the class;

15 (iv) there are representative parties who will fairly and adequately  
16 protect the interests of the class; and

17 (v) the prosecution of separate actions by or against individual  
18 members of the class would create a risk of inconsistent or varying  
19 adjudications with respect to the issue of valuation and other issues  
20 common to the class.

21 (e) The procedure for determining just compensation shall be in the  
22 manner prescribed by the eminent domain procedure law, except to the  
23 extent such procedure is inconsistent with the provisions of this title,  
24 in which case the provisions of this title shall control.

25 (f) Upon the entry of an award finally determining just compensation  
26 for the stock, the authority shall have sixty days after receipt of  
27 notice of entry of such award within which to elect to proceed with the  
28 taking or to abandon such acquisition as provided in subdivision nine of  
29 this subdivision. Notice of such election shall be served by the  
30 authority and by the stock transfer agent in the manner described in  
31 paragraph (a) of this subdivision. If the authority elects to proceed  
32 with the acquisition, it shall deposit with the supreme court in which  
33 the condemnation proceeding was held an amount equal to the award within  
34 one hundred eighty days after receipt by the authority of notice of  
35 entry of such award. Upon the making of such deposit, the authority  
36 shall notify such downstate utility corporation's stock transfer agent  
37 in writing of such deposit. The sum so deposited shall be applied as  
38 provided in the eminent domain procedure law. Upon making such deposit  
39 and giving such notice to the stock transfer agent, title to all stock  
40 described in the notice of taking shall immediately vest in the authori-  
41 ty and the authority shall have the immediate right thereto. In the  
42 event the authority elects to abandon the acquisition, the provisions of  
43 subdivision nine of this section shall apply.

44 (g) It shall be a condition precedent to the payment of compensation  
45 for any such securities that such securities be surrendered to the  
46 supreme court or to such other entity, including the issuer's stock  
47 transfer agent, as the supreme court may direct.

48 6. Procedure for acquisition of a downstate utility corporation  
49 assets. (a) If the authority shall find it necessary or convenient to  
50 acquire any real or personal property of such downstate utility corpo-  
51 ration, other than securities, whether for immediate or future use, then  
52 the authority need not determine that such property is required for  
53 public use, since the legislature already has made such determination in  
54 this title which determination shall be binding for all purposes. The  
55 authority need not publish any notice of its intention to acquire such

1 property or hold any public hearing with respect thereto or to the  
2 public use of such action.

3 (b) When any real property of such downstate utility corporation with-  
4 in this state is sought to be acquired by the exercise of the power of  
5 eminent domain, and after the authority shall have entered into negoti-  
6 ations with such downstate utility corporation for the purchase of such  
7 property, the authority shall cause a survey and map to be made thereof  
8 and shall cause such survey and map to be filed in its office and in the  
9 office of the county clerk in which such property is located. There  
10 shall be annexed to such survey and map a certificate executed by the  
11 chief engineer of the authority, or by such other officer or employee as  
12 may be designated by the board of trustees, stating that the property or  
13 interest therein described in such survey and map is necessary for its  
14 purposes.

15 (c) Upon filing such survey and map, the authority shall petition a  
16 special term of the supreme court in the judicial district in which the  
17 property is located for the acquisition of such property or interest  
18 therein. Such petition shall describe the property being acquired, the  
19 valuation date, as determined by the authority, and such additional  
20 information as the authority may reasonably deem necessary to facilitate  
21 the process of condemnation and payment. The petition shall state that  
22 the authority will elect whether or not to pay the amount of such award  
23 when it has been finally determined. In all other respects, such peti-  
24 tion shall be generally in the form prescribed by the eminent domain  
25 procedure law, so far as consistent herewith. Such petition, together  
26 with a notice of pendency of the proceeding, shall be filed in the  
27 office of the county clerk of the county in which the property is  
28 located and shall be indexed and recorded as provided by law. A copy of  
29 such petition, together with a notice of the presentation thereof to  
30 such special term of the supreme court, shall be served upon the owners  
31 of such property as provided in the eminent domain procedure law. The  
32 authority may cause a duplicate original affidavit of the service there-  
33 of to be recorded in the books used for recording deeds in the office of  
34 the county clerk of the county in which the property described in such  
35 notice is located, and the recording of such affidavit shall be prima  
36 facie evidence of due service thereof.

37 (d) Subsequent proceedings shall be conducted generally in the manner  
38 prescribed by the eminent domain procedure law except to the extent the  
39 provisions thereof are inconsistent with the provisions of this title,  
40 in which case the provisions of this title shall control.

41 (e) In any proceeding involving the valuation of a downstate utility  
42 corporation's property taken by the authority, the supreme court shall  
43 ascertain and determine just compensation for the property taken as of  
44 the valuation date, giving due consideration to the applicable findings  
45 and determinations of the legislature set forth in subdivision of this  
46 section.

47 (f) Should a downstate utility corporation's property be taken by the  
48 exercise of the power of eminent domain and if such downstate utility  
49 corporation shall have agreed upon the compensation to be paid therefor  
50 in settlement of the proceeding, if, such downstate utility corporation  
51 shall be entitled to payment of the agreed or awarded compensation with-  
52 in one hundred eighty days after the date of the agreement upon the  
53 amount of the compensation or of the entry of the award, together with  
54 interest upon the amount of such compensation from the time of acquisi-  
55 tion thereof by the authority to the date of payment of such compen-  
56 sation; but such interest shall cease upon the service by the authority,

1 upon the person or corporation entitled thereto, of a fifteen days'  
2 notice that the authority is ready and willing to pay the amount of such  
3 compensation upon the presentation of proper proofs and vouchers. Such  
4 notice shall be served personally or by registered mail and publication  
5 thereof shall be made at least once a week for three successive weeks in  
6 a daily newspaper of general circulation in the county in which such  
7 property or any part thereof is located.

8 (g) Upon the entry of an award finally determining just compensation  
9 for the property of such downstate utility corporation, the authority  
10 shall have sixty days after receipt of notice of entry of such award  
11 within which to elect to proceed with the taking or to abandon such  
12 acquisition as provided in subdivision nine of this section. Notice of  
13 such election shall be served by the authority on the owners of such  
14 property in the manner described in paragraph (c) of this subdivision.  
15 If the authority elects to proceed with the acquisition, it shall depos-  
16 it with the supreme court in which the condemnation proceeding was held  
17 an amount equal to the award within one hundred eighty days after  
18 receipt by the authority of notice of entry of such award. Upon the  
19 making of such deposit, the authority shall notify such downstate utili-  
20 ty corporation in writing of such deposit. The sum so deposited shall  
21 be applied as provided in the eminent domain procedure law. Upon making  
22 such deposit and giving such notice to such downstate utility corpo-  
23 ration, title to all property described in the notice of taking shall  
24 immediately vest in the authority and the authority shall have the imme-  
25 diate right thereto. The order setting forth the award, together with  
26 evidence from the clerk of the court of receipt of the amount of the  
27 award, shall be filed in the office of the county clerk of the county in  
28 which the property is located and shall be indexed and recorded in the  
29 same manner as a notice of pendency under the eminent domain procedure  
30 law. The owner or person in possession of such property shall deliver  
31 possession thereof to the authority upon demand, and in case possession  
32 is not delivered when demanded or demand is not convenient because of  
33 absence of the owner or inability to locate or determine the owner, the  
34 authority may apply to the court without notice for an order requiring  
35 the sheriff to put it into possession of such real property. Such an  
36 order shall be executed as if it were an execution for the delivery of  
37 the possession of the property. In the event the authority elects to  
38 abandon the acquisition, the provisions of subdivision nine of this  
39 section shall apply.

40 7. At any time the authority and its duly authorized agents and  
41 employees may, on reasonable notice and during business hours, (a) enter  
42 upon any real property proposed to be acquired for the purpose of making  
43 the surveys or maps mentioned in this section, or of making such other  
44 surveys, inspections or examinations of real and personal property and  
45 (b) inspect and make copies of the books and records of the issuer of  
46 such securities, all as the authority may deem necessary or convenient  
47 for the purposes of this title.

48 8. Upon the acquisition of all the outstanding shares of stock of a  
49 corporate issuer representing all the voting rights and equity thereof,  
50 the authority shall as soon as reasonably practicable take all steps  
51 necessary to ensure that the rights and claims of all the holders of any  
52 other stock and debt securities and all other creditors thereof are as  
53 secure as they were immediately prior to the acquisition by the authori-  
54 ty. Nothing herein shall prohibit the authority from taking any appro-  
55 priate and prudent action to renegotiate and restructure such debt or  
56 from purchasing the preferred stock and debt securities issued by such

1 corporation at such prices as the authority may determine. The authority  
2 may also exchange its bonds for any outstanding preferred stock or debt  
3 securities with the consent of the holders of such preferred stock or  
4 debt securities.

5 9. If the authority determines, in its sole discretion, that the total  
6 cost of acquisition will result in rates in excess of the rates which  
7 would result from continued operation by such downstate utility corpo-  
8 ration, the authority shall abandon the acquisition. In such event, the  
9 authority shall serve notice of such abandonment (a) in the case of a  
10 stock acquisition, by causing to be mailed by certified or registered  
11 mail a copy of such notice to each former owner of stock as shown on  
12 such downstate utility corporation's stock transfer books immediately  
13 prior to such acquisition at the address shown on such stock transfer  
14 books and by causing to be published a copy of such notice in at least  
15 five successive issues of a daily newspaper of national circulation or  
16 (b) in the case of an asset acquisition, in the same manner as provided  
17 for the service of a petition for acquisition in paragraph (c) of subdi-  
18 vision six of this section. In addition, in the case of an asset acqui-  
19 sition the authority shall file a copy of the notice of abandonment with  
20 the county clerk of the county in which is located any real property  
21 that was taken and with the clerk of the supreme court in which the  
22 proceeding was instituted.

23 10. The provisions with respect to the valuation of stock and property  
24 set forth in this section shall apply only to stock or property of a  
25 downstate utility corporation, as the case may be, acquired by the  
26 authority by the exercise of the power of eminent domain.

27 § 1022-f. Deposit and investment of moneys of the authority. 1. All  
28 moneys of the authority, from whatever source derived, except as other-  
29 wise authorized or provided in this title, shall upon receipt be depos-  
30 ited forthwith in a bank or banks designated by the trustees, to be  
31 selected in accordance with such standards as the trustees shall set  
32 forth in the by-laws or investment guidelines of the authority, which  
33 standards shall take into account the creditworthiness and capital posi-  
34 tion of the depository bank or banks. The moneys in such accounts may be  
35 invested in obligations of the state or the United States, or guaranteed  
36 by either in accordance with practices that the trustees shall set forth  
37 in the by-laws or investment guidelines of the authority. The moneys in  
38 such accounts shall be withdrawn on the order of such person or persons  
39 as the directors shall authorize in the by-laws of the authority and  
40 shall be applied to the use of the authority as the trustees shall  
41 authorize in the by-laws of the authority. All deposits of such moneys  
42 shall be secured in accordance with section twenty-nine hundred twenty-  
43 five of this chapter. The state comptroller and his or her legally  
44 authorized representatives are authorized and empowered from time to  
45 time to examine the accounts and books of the authority, including its  
46 receipts, disbursements, contracts, leases, sinking funds, investments  
47 and any other records and papers relating to its financial standing; the  
48 authority shall not be required to pay a fee for any such examination.

49 2. The authority shall have power to contract with holders of any of  
50 its bonds or notes or other obligations, or any trustee therefor, as to  
51 the custody, collection, securing, investment and payment of any moneys  
52 of the authority and of any moneys held in trust or otherwise for the  
53 payment of bonds or notes or other obligations, and to carry out any  
54 such contract. Moneys held in trust or otherwise for the payment of  
55 bonds or notes or other obligations or in any way to secure bonds or  
56 notes or obligations and deposits of such moneys shall be secured in



1 full in direct obligations of the federal government the payment of  
2 which is guaranteed by the United States of America. Such investments  
3 shall be held on deposit only in banks having a minimum credit rating  
4 and a minimum accumulated capital, as the trustees shall specify in the  
5 by-laws or investment guidelines of the authority.

6 3. Subject to agreements with noteholders and bondholders or any trustee  
7 therefor, the authority shall prescribe a uniform system of accounts  
8 in accordance with generally accepted accounting principles.

9 4. The trustees shall adopt investment guidelines and standards to  
10 implement the foregoing provisions of this section, which guidelines and  
11 standards shall be reviewed annually by the trustees and shall be made  
12 available to state and municipal officials and to the public.

13 § 1022-g. Conflicts of interest. Eligibility for appointment as a  
14 trustee, officer or employee of the authority shall be subject to the  
15 provisions of section twenty-eight hundred twenty-five of this chapter.  
16 In addition to the requirements of such section:

17 1. If any trustee, officer or employee of the authority shall have an  
18 interest, either direct or indirect, in any contract to which the  
19 authority is or is to be a party, such interest shall be disclosed to  
20 the authority in writing and shall be set forth in the minutes of the  
21 authority. The trustee, officer or employee having such interest shall  
22 not participate in any action by the authority with respect to such  
23 contract.

24 2. No trustee, officer or employee of the authority shall be deemed to  
25 have such an interest solely by reason of the ownership of two percent  
26 or less of the securities of a corporation which is or is to be a party  
27 to a contract with the authority, including without limitation the hold-  
28 ing company of any banking institution in which the funds of the author-  
29 ity are, or are to be deposited, or which is or is to be acting as trustee  
30 or paying agent under any bond or note resolution, trust indenture  
31 or similar instrument to which the authority is a party.

32 3. Nothing in this section shall be deemed or construed to limit the  
33 right of any trustee, officer or employee of the authority to acquire an  
34 interest in the securities of the authority.

35 § 1022-h. Sale of surplus power. Whenever any electric power which the  
36 authority may acquire creates a surplus over the amount of electric  
37 power required by the residents of the service area, the authority may  
38 sell such surplus in territory outside the service area to persons, or  
39 public or private corporations. In acquiring any facility or property  
40 which also serves any municipality or territory outside the service  
41 area, the authority, if it deems it advantageous and economical so to  
42 do, may, with the consent of the trustees, serve any such municipality  
43 or territory or sell electric power to persons, or public or private  
44 corporations in such territory or to such municipality.

45 § 1022-i. Audit and annual reports. 1. The accounts of the authority  
46 shall be subject to the supervision of the comptroller and an annual  
47 audit shall be performed by an independent certified public accountant  
48 selected by the trustees and shall be made available to the municip-  
49 alities served by the authority and to the public.

50 2. The authority shall submit a detailed annual report pursuant to and  
51 as specified in section twenty-eight hundred of this chapter, and a copy  
52 of such report shall be filed with the county executives of the counties  
53 within the service area, and with the mayors and supervisors of the  
54 municipalities within the service area and shall be made available to  
55 the municipalities served by the authority and to the public. Nothing in

1 this section shall be deemed to exempt the authority from any rule or  
2 regulation, including the public authorities law.

3 § 1022-j. Bonds, notes and other obligations of the authority. 1. The  
4 authority shall have power and is hereby authorized from time to time to  
5 issue its bonds, notes or other obligations, in an aggregate amount not  
6 to exceed one hundred twenty-five million dollars, for the purpose of  
7 financing any capital project authorized by this title, including but  
8 not limited to, the acquisition of any real or personal property or  
9 facilities deemed necessary by the authority, development and profes-  
10 sional expenses, and funding any capital or other reserve funds estab-  
11 lished in connection with the authority's operations or issuances, in  
12 such principal amount as the trustees shall determine necessary to  
13 perform its corporate duties and further its purposes as authorized in  
14 this title. The maximum maturity of any such bond shall not exceed thir-  
15 ty years from its date of issuance. The maximum maturity of any such  
16 note or other obligation shall not exceed five years from its date of  
17 issuance.

18 2. Except as may be otherwise expressly provided by the authority, the  
19 issuance of bonds, notes or other obligations, shall be general obli-  
20 gations of the authority payable out of any moneys or revenues of the  
21 authority, subject only to any agreements with the holders of particular  
22 bonds, notes or other obligations pledging any particular moneys or  
23 revenues.

24 3. The authority shall have power from time to time, whenever it deems  
25 refunding expedient, to refund any bonds, notes or other obligations by  
26 the issuance of new bonds, notes or other obligations, up to one hundred  
27 twenty-five million dollars in the aggregate, whether the bonds, notes  
28 or other obligations to be refunded have or have not matured, and may  
29 issue bonds, notes or other obligations partly to refund bonds, notes or  
30 other obligations then outstanding and partly for any other purpose  
31 described in this section. Refunding bonds, notes or other obligations  
32 may be exchanged for the bonds, notes or other obligations to be  
33 refunded, with such cash adjustments as may be agreed, or may be sold  
34 with the proceeds applied to the purchase or payment of the bonds to be  
35 refunded.

36 4. Bonds may be issued either in a series with multiple discrete matu-  
37 rity dates or as term bonds with a single maturity date. The bonds,  
38 notes or other obligations shall be authorized by resolution of the  
39 trustees and shall bear such date or dates, mature at such time or  
40 times, bear interest at such rate or rates, payable annually or semi-an-  
41 nually, be in such denominations, be in such form, carry such registra-  
42 tion privileges, be executed in such manner, be payable in lawful money  
43 of the United States of America at such place or places, and be subject  
44 to such terms of redemption, as such resolution or resolutions may  
45 provide. In the event that term bonds, notes or other obligations are  
46 issued, the resolution authorizing the same may make such provisions for  
47 the establishment and management of adequate sinking funds for the  
48 payment thereof, as the authority may deem necessary.

49 5. The bonds, notes or other obligations of the authority may be sold  
50 at public or private sale for such price or prices as the authority  
51 shall determine. For a private sale of its securities, the authority  
52 shall obtain the written approval of the terms of such sale from the  
53 comptroller if such sale is to a party other than the comptroller, or  
54 from the director of the budget where such sale is to the comptroller,  
55 in either case prior to closing the issuance transaction.

1     6. Any resolution authorizing any issuance of bonds, notes or other  
2 obligations may contain provisions, which shall be a part of the  
3 contract between the authority and the holders of the issued securities,  
4 as to:

5     (a) pledging all or any part of the revenues of the authority or its  
6 projects or any revenue producing contract or contracts made by the  
7 authority with any individual, partnership, limited liability company,  
8 corporation or association to secure the payment of the bonds, notes or  
9 other obligations, subject to such agreements with holders of securities  
10 of the authority;

11     (b) pledging, assigning or creating a lien on all or any part of  
12 assets of the authority, including mortgages and obligations security  
13 mortgages, to secure the payment of the bonds, subject to such agree-  
14 ments with holders of securities of the authority;

15     (c) the setting aside of reserves or sinking funds, and the regulation  
16 and disposition thereof;

17     (d) establishment of special funds for deposit of moneys received from  
18 the proceeds of the issuance of securities as the trustees shall deter-  
19 mine, consistent with the authorizing resolution and the provisions of  
20 this title;

21     (e) limitations on the purpose to which the proceeds of sale of any  
22 issuance of bonds, notes or other obligations then or thereafter to be  
23 issued may be applied and pledging such proceeds to secure the payment  
24 of the bonds, notes or other obligations;

25     (f) limitations of the issuance of additional bonds, notes or other  
26 obligations; the terms upon which additional bonds, notes or other obli-  
27 gations may be issued and secured; and the refunding of outstanding  
28 bonds, notes or other obligations;

29     (g) the procedure, if any, by which the terms of any contract with  
30 bondholders may be amended or abrogated, the amount of bonds the holders  
31 of which must consent thereto, and the manner in which such consent may  
32 be given;

33     (h) providing for the appointment and powers of a trustee for holders  
34 of securities, and the rights, powers and duties of such trustee as the  
35 directors may determine;

36     (i) limitations on the amount of moneys derived from a project to be  
37 expended for operating, administrative or other expenses of the authori-  
38 ty;

39     (j) defining the acts or omissions to act which shall constitute a  
40 default in the duties of the authority to holders of its obligations and  
41 providing the rights and remedies of such holders in the event of a  
42 default, provided, however, that such rights and remedies shall not be  
43 inconsistent with the laws of the state and any other provisions of this  
44 title; and provided, further, however, that nothing contained in this  
45 title shall be deemed to restrict the right of the state or of any muni-  
46 cipality to amend, modify or otherwise alter statutes, local laws, ordi-  
47 nances, resolutions or agreements imposing or relating to taxes or fees  
48 or appropriations relating thereto; and there shall not be included in  
49 any resolution or contract or agreement with the holders of the bonds,  
50 notes or other obligations authorized by this title any provision which  
51 provides that a default shall occur as a result of the state or of a  
52 municipality exercising its right to amend, modify or otherwise alter  
53 laws, ordinances, resolutions or agreements imposing or relating to  
54 taxes or fees or appropriations relating thereto; and

55     (k) any other provisions not inconsistent with those enumerated in  
56 this subdivision and necessary to effect its issuances of bonds, notes

1 or other obligations and the rights of the holders of its securities, or  
2 otherwise in furtherance of its corporate purposes.

3 7. Notwithstanding any other provision of this title, any such resol-  
4 ution or resolutions shall contain a covenant by the authority that it  
5 will at all times maintain rates, fees or charges sufficient to pay, and  
6 that any contracts entered into by the authority for the sale or  
7 distribution of power shall contain rates, fees or charges sufficient to  
8 pay the costs of operation and maintenance of the project, the principal  
9 of and interest on any obligations issued pursuant to such resolution as  
10 the same severally become due and payable, and to maintain any debt  
11 service coverage ratios and any reserves required by the terms of such  
12 resolution or resolutions. Provided however, that the total rates, fees,  
13 and charges shall not exceed the prevailing electric rate in the service  
14 area. The prevailing electric rate in the service area shall mean the  
15 average of the total rates, fees, and charges paid by former customers  
16 of the downstate utility corporation that served such customers.  
17 Compliance with the prevailing electric rates in the service area shall  
18 be left to the sole determination of the public service commission.

19 8. It is the intent of this title that any pledge of revenues or other  
20 moneys or of a revenue producing contract or contracts made by the  
21 authority shall be valid and binding from the time when the pledge is  
22 made; that the revenues or other moneys or proceeds of any contract or  
23 contracts so pledged and thereafter received by the authority shall  
24 immediately be subject to the lien of such pledge without any physical  
25 delivery thereof or further act; and that the lien of any such pledge  
26 shall be valid and binding as against all parties having claims of any  
27 kind in tort, contract or otherwise against the authority irrespective  
28 of whether such parties have notice thereof. Neither the resolution nor  
29 any other instrument by which a pledge is created need be recorded.

30 9. Neither the trustees of the authority nor any person executing the  
31 bonds, notes or other obligations shall be liable personally on the  
32 bonds, notes or other obligations or be subject to any personal liabil-  
33 ity or accountability by reason of the issuance thereof.

34 10. The authority shall have the power out of any funds available  
35 therefor to purchase bonds, notes or other obligations. The authority  
36 may hold, pledge, cancel or resell such bonds, notes or other obli-  
37 gations, subject to and in accordance with agreements with bondholders.

38 11. Any bonds, notes or other obligations issued by the authority are  
39 hereby made securities in which all public officers and bodies of this  
40 state and all municipalities and municipal subdivisions, all insurance  
41 companies and associations and other persons carrying on an insurance  
42 business, all banks, bankers, trust companies, savings banks and savings  
43 associations, including savings and loan associations, building and loan  
44 associations, investment companies and other persons carrying on a bank-  
45 ing business, and all other persons whatsoever who are authorized to  
46 invest in bonds, notes or other obligations of the state, may properly  
47 and legally invest funds including capital in their control or belonging  
48 to them; subject to the provisions of any other general or special law  
49 to the contrary.

50 12. The authority is authorized to obtain from any department or agen-  
51 cy of the United States of America or the state or any nongovernmental  
52 insurer or financial institution any insurance, guaranty or other credit  
53 support device, to the extent available, as to, or for the payment or  
54 repayment of interest or principal, or both, or any part thereof, on any  
55 bonds, notes or other obligations issued by the authority and to enter  
56 into any agreement or contract with respect to any such insurance or

1 guaranty, except to the extent that the same would in any way impair or  
2 interfere with the ability of the authority to perform and fulfill the  
3 terms of any agreement made with the holders of outstanding bonds, notes  
4 or other obligations of the authority.

5 13. In addition to the powers conferred in this section upon the  
6 authority to secure its bonds, notes or other obligations, the authority  
7 shall have the power in connection with the issuance of bonds, notes or  
8 other obligations to enter into such agreements as the authority may  
9 deem necessary, convenient or desirable concerning the use or disposi-  
10 tion of its revenues or other moneys or property, and for the acquisi-  
11 tion, alteration or disposition of its property, real and personal,  
12 including the mortgaging of any of its properties and the entrusting,  
13 pledging or creation of any other security interest in any such reven-  
14 ues, moneys or properties and the doing of any act, including refraining  
15 from doing any act, which the authority would have the right to do in  
16 the absence of such agreements. The authority shall have the power to  
17 enter into amendments of any such agreements within the powers granted  
18 to the authority by this title and to perform such agreements. The  
19 provisions of any such agreements may be made a part of the contract  
20 with the holders of bonds, notes or other obligations of the authority.

21 14. All bonds, notes and other obligations issued by the authority  
22 under the provisions of this title are hereby declared to have all the  
23 qualities and incidents of negotiable instruments under the applicable  
24 laws of the state.

25 15. Nothing in this section shall be deemed to allow the authority to  
26 exceed its one hundred twenty-five million dollar aggregate debt limit.

27 § 1022-k. State and municipalities not liable on bonds or notes or  
28 other obligations. The securities of the authority shall not be a debt  
29 of the state or of any municipality, and neither the state nor any muni-  
30 cipality shall be liable thereon. The authority shall not have the power  
31 to pledge or restrict the credit, the revenues or the taxing power of  
32 the state or of any municipality, and neither the credit, the revenues  
33 nor the taxing power of the state or of any municipality shall be or  
34 shall be deemed to be pledged to the payment of any securities of the  
35 authority. Each evidence of indebtedness of the authority, including the  
36 securities of the authority, shall contain a clear and explicit state-  
37 ment of the provisions of this section. Nothing in this title shall be  
38 deemed to obligate the state or any municipality to make any payments or  
39 impose any taxes to satisfy the debt service obligations of the authori-  
40 ty.

41 § 1022-l. Agreement of the state. The state does hereby pledge to and  
42 agree with the holders of any bonds, notes or other obligations issued  
43 by the authority under this title, that the state will not limit or  
44 alter the rights hereby vested in the authority to establish and collect  
45 the revenues and other charges referred to in this title and to fulfill  
46 the terms of any agreements made with or for the benefit of the holders  
47 of the securities, or in any way impair the rights and remedies of the  
48 bondholders until such securities are fully met and discharged. The  
49 authority is authorized to include this pledge of the state in all  
50 agreements by the authority with the holders of its securities. Nothing  
51 contained in this title shall be deemed to restrict any right of the  
52 state or municipality to amend, modify, repeal or otherwise alter stat-  
53 utes imposing or relating to taxes or fees, or appropriations relating  
54 thereto. The authority shall not include within any resolution, contract  
55 or agreement with holders of the bonds, notes or other obligations  
56 issued under this article any provision which provides that a default



1 occurs as a result of the state or of a municipality exercising its  
2 right to amend, modify, or repeal or otherwise alter any statute impos-  
3 ing or relating to taxes, fees, or appropriations relating thereto.

4 § 1022-m. Exemption of the authority from taxation. 1. It is hereby  
5 found and declared that the operation of the authority is primarily for  
6 the benefit of the people of the participating municipalities, counties  
7 and the state, for the improvement of their health, welfare and prosper-  
8 ity, and is a public purpose, and the authority shall be regarded as  
9 performing an essential governmental function in carrying out the  
10 provisions of this title.

11 2. The authority shall be required to pay no taxes nor assessments  
12 upon any of the property acquired or controlled by it or upon its activ-  
13 ities in the operation and maintenance thereof or upon income derived  
14 therefrom, provided that nothing herein shall prevent the authority from  
15 entering into agreements to make payments in lieu of taxes.

16 3. The authority shall make payments in lieu of taxes to munici-  
17 palities and school districts equal to the taxes and assessments which  
18 would have been received from year to year by such jurisdiction.

19 4. The authority shall also make payments in lieu of taxes for those  
20 taxes which would otherwise be imposed upon a utility corporation pursu-  
21 ant to: (a) section one hundred eighty-six-a and former section one  
22 hundred eighty-six of the tax law as such sections were in effect on  
23 December thirty-first, nineteen hundred ninety-nine; (b) any taxes  
24 imposed by a city within the authority's service area pursuant to the  
25 authorization granted by section twenty-b of the general city law; and  
26 (c) any taxes imposed by a village within the authority's service area  
27 pursuant to authorization granted by section 5-530 of the village law.

28 5. Notwithstanding the exemption in subdivision two of this section,  
29 the authority shall also be subject to the assessments imposed pursuant  
30 to section eighteen-a of the public service law.

31 6. The securities issued by the authority, and the income therefrom  
32 shall, at all times, be free from taxation, except for estate and gift  
33 taxes.

34 7. Nothing in this title shall relieve the authority from its obli-  
35 gations to register for sales tax purposes, collect state or local sales  
36 and compensating use taxes imposed by or pursuant to the authority of  
37 articles twenty-eight and twenty-nine of the tax law, and otherwise  
38 comply with those articles on its sale of property or services.

39 § 1022-n. Actions against the authority. 1. Any action, suit or  
40 proceeding to which the authority may be a party in which any question  
41 arises as to the validity of this title or the valuation of stock or  
42 assets acquired by the authority by the exercise of the power of eminent  
43 domain shall be preferred over all other civil causes in all courts of  
44 the state, except election matters, and shall be heard and determined in  
45 preference to all other civil business pending therein, except election  
46 matters, irrespective of position on the calendar. The same preference  
47 shall be granted upon application of counsel to the authority in any  
48 action or proceeding questioning the validity of this title or the valu-  
49 ation of stock or assets acquired by the authority by the exercise of  
50 the power of eminent domain in which such counsel may be allowed to  
51 intervene. The venue of any such action or proceeding shall be laid in  
52 the supreme court pursuant to article five of the civil practice law and  
53 rules.

54 2. In the event any party shall appeal an award of compensation for  
55 the taking by the authority of stock or assets, such party shall post a  
56 bond in such amount, if any, as the supreme court shall deem appropriate

1 to adequately protect the interests of the other party under all the  
2 circumstances.

3 3. An action against the authority founded on tort shall be commenced  
4 in compliance with all the requirements of section fifty-e of the gener-  
5 al municipal law, except that an action against the authority for wrong-  
6 ful death shall be commenced in accordance with the provisions of title  
7 eleven of article nine of this chapter.

8 § 1022-o. Equal employment opportunity. All contracts entered into by  
9 the authority pursuant to this title of whatever nature and all docu-  
10 ments soliciting bids or proposals therefor shall contain or make refer-  
11 ence to the following provision:

12 The contractor shall not discriminate against employees or applicants  
13 for employment because of race, creed, color, national origin, sex, age,  
14 disability or marital status, and will undertake or continue existing  
15 programs of affirmative action to ensure that minority group persons and  
16 women are afforded equal opportunity without discrimination. Such  
17 programs shall include, but not be limited to, recruitment, employment,  
18 job assignment, promotion, upgrading, demotion, transfer, layoff, termi-  
19 nation, rates of pay or other forms of compensation, and selection for  
20 training and retraining, including apprenticeship and on-the-job train-  
21 ing.

22 § 1022-p. Limitation of liability; indemnification. 1. The trustees,  
23 officers and employees of the authority, while acting within the scope  
24 of their authority as trustees, officers or employees, shall not be  
25 subject to any personal or civil liability resulting from the exercise,  
26 carrying out or advocacy of any of the authority's purposes or power  
27 unless the conduct of the trustees, officers or employees is finally  
28 determined by a court of competent jurisdiction to constitute inten-  
29 tional wrongdoing or recklessness.

30 2. The provisions of section eighteen of the public officers law shall  
31 apply to trustees, officers and employees of the authority in connection  
32 with any and all claims, demands, suits, actions or proceedings which  
33 may be made or brought against any of them arising out of any determi-  
34 nations made or actions taken or omitted to be taken in compliance with  
35 any actions taken pursuant to the powers of this title.

36 3. As used in this section, the terms "trustee", "officer" and  
37 "employee" shall include a former trustee, officer or employee and his  
38 or her estate or judicially appointed personal representative.

39 4. Nothing in this section shall limit the obligations of a "trustee",  
40 "officer", or "employee" of the authority or of a subsidiary of the  
41 authority as a "person required to collect tax", as such term is defined  
42 in article twenty-eight of the tax law, if such trustee, officer or  
43 employee is, or was, under a duty to act for the authority or subsid-  
44 iary, or both, as the case may be, in complying with any requirement of  
45 article twenty-eight or related provision of article twenty-nine of the  
46 tax law.

47 § 1022-q. Website. The authority shall make accessible to the public,  
48 via its official or shared internet website, documentation pertaining to  
49 its mission, current activities, most recent annual financial reports,  
50 current year budget and its most recent independent audit report unless  
51 such information is covered by subdivision two of section eighty-seven  
52 of the public officers law.

53 § 1022-r. Prevailing wage. Whenever the authority enters into any  
54 contract, subcontract, lease, grant, bond, covenant or other agreement  
55 for or in connection with any construction, demolition, reconstruction,  
56 excavation, rehabilitation, repair, renovation, alteration, or improve-

1 ment project, such project shall be deemed to be a public works project  
2 for the purposes of article eight of the labor law, and all of the  
3 provisions of article eight of the labor law shall be applicable to all  
4 the work involved in the construction, demolition, reconstruction, exca-  
5 vation, rehabilitation, repair, renovation, alteration, or improvement  
6 of such project. Funds, financial assistance, or any other benefits  
7 provided pursuant to this article shall not be utilized for or in  
8 connection with the construction, demolition, reconstruction, exca-  
9 vation, rehabilitation, repair, renovation, alteration, or improvement  
10 of any project to which the provisions of article eight of the labor law  
11 are not applicable.

12 § 1022-s. Periodic review by legislature. Beginning in the year two  
13 thousand twenty, and not more than every ten years thereafter, the  
14 legislature of the state of New York shall conduct a comprehensive  
15 review, of the structure, activities and operations of the authority,  
16 and the authority shall provide such records, reports and testimony as  
17 the legislature may request to assist in the conduct of this review.

18 § 1022-t. Severability. The provisions of this title are severable,  
19 and if any clause, sentence, paragraph, section or part of this title,  
20 or the application thereof to any person or circumstance, shall be  
21 adjudged by any court of competent jurisdiction to be invalid or unen-  
22 forceable, such judgment shall not affect, impair or invalidate the  
23 remainder of this title or the application of such provision to any  
24 other person or circumstance, but shall be confined in its operation to  
25 the clause, sentence, paragraph, section or part thereof or person or  
26 circumstance directly involved in the controversy in which such judgment  
27 shall have been rendered.

28 § 2. Subdivision 1 of section 51 of the public authorities law is  
29 amended by adding a new paragraph o to read as follows:

30 o. Downstate New York Power Authority

31 § 3. This act shall take effect on the one hundred eightieth day after  
32 it shall have become a law. Effective immediately, the addition, amend-  
33 ment and/or repeal of any rule or regulation necessary for the implemen-  
34 tation of this act on its effective date are authorized to be made and  
35 completed on or before such effective date.