

STATE OF NEW YORK

1326

2021-2022 Regular Sessions

IN ASSEMBLY

January 8, 2021

Introduced by M. of A. CARROLL, KIM, RICHARDSON, DINOWITZ, GOTTFRIED, DICKENS, WEPRIN, SIMON, COLTON -- Multi-Sponsored by -- M. of A. HYNDMAN -- read once and referred to the Committee on Corporations, Authorities and Commissions

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:

Section 1. Article 5 of the public authorities law is amended by 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.

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

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1022-o. Equal employment opportunity.
1022-p. Limitation of liability; indemnification.
1022-q. Website.
1022-r. Prevailing wage.
1022-s. Periodic review by legislature.
1022-t. Severability.

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

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

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

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

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

4. "Commission" means the public service commission.

5. "Comptroller" means the state comptroller.

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

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

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

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

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

11. "Property" means the power distribution system or systems of the
authority, whether completed facilities or projects in construction,
whether situated within or without the territorial limits of the service
area, including the plants, works, structures, poles, lines, conduits,
mains, systems, instrumentalities or parts thereof and appurtenances
thereto, lands, franchises and interest in land, including lands under
water and riparian rights, space rights and air rights, contract rights,
substations, and distribution facilities, or any other property inci-
dental to and included in such system or part thereof, and any improve-
ments, extensions or betterments. The term "property" shall also include
any and all interests in real property less than full title, such as
easements, rights of way, uses, leases, licenses and all other incorpo-
real hereditaments and every estate, interest or right, legal or equita-

ble, including terms for years and liens thereon by way of judgments, mortgages or otherwise, and also all claims for damages related to such 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-two, and the trustees so elected shall take office on January first, two thousand twenty-three. 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-two 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.

1 3. The trustees shall serve without compensation but shall be entitled
2 to reimbursement of their actual and necessary expenses incurred in the
3 performance of their official duties, as may be authorized by the trus-
4 tees, in each case upon appropriate documentation by the submitting
5 trustee. No trustee or any entity, the majority of which is owned or
6 controlled by any trustee, shall receive any additional compensation
7 from the authority or be employed by the authority in any other capacity
8 by whatever means.

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

15 5. The trustees shall appoint an executive committee of not less than
16 three trustees and shall delegate such duties and responsibilities of
17 the trustees to the executive committee as it may determine from time to
18 time, except that the trustees shall not delegate to the executive
19 committee the power to authorize the issuance of securities. The trus-
20 tees may appoint such additional committees with such duties and respon-
21 sibilities as they may determine from time to time.

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

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

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

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

48 (c) In addition to all of the powers of the public service commission,
49 prior to acquiring any property and commencing operations, the authority
50 shall secure an order from the commission authorizing such acquisition
51 and commencement. The commission shall have the power to deny the
52 authority's application to acquire property and commence operations. The
53 authority shall comply with any and all requests for documents, materi-
54 als, and testimony that the commission may seek. The commission shall
55 consider, including but not limited to, the following factors before
56 issuing an order: ratepayer impacts; system reliability; environmental

1 impacts, conservation of energy resources; preservation or creation of
2 economic opportunities; power efficiency and availability; public health
3 and welfare; and any other factor it deems relevant. The authority
4 granted pursuant to this paragraph shall terminate upon commencement of
5 distribution of power.

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

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

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

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

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

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

52 2. To develop, acquire, construct, reconstruct, rehabilitate and
53 improve facilities for the distribution of electric power or any
54 connected service;

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

4 4. To investigate, implement and integrate, to the fullest extent
5 practicable and economically feasible, such resource conservation and
6 energy efficiency measures and equipment intended to reduce power demand
7 and usage, utilize green technologies, alternative and renewable fuels,
8 net metering, crediting mechanisms for distributed energy resources and
9 demand response programs, all as integral elements in its investments in
10 new equipment for distribution of power, and in its marketing and sale
11 of electricity to consumers;

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

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

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

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

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

53 10. To enter into cooperative agreements with other authorities, muni-
54 cipalities, utility companies, individuals, firms or corporations, and
55 the dominion of Canada and its political subdivisions, for the intercon-
56 nection of facilities and the exchange or interchange of electric power

1 or connected services, upon such terms and conditions as shall be deter-
2 mined to be reasonable;

3 11. To execute contracts, borrow money, issue bonds, notes and other
4 obligations as provided in section one thousand twenty-two-i of this
5 title, and sell the same in such amounts and at such prices, interest
6 rates and other financial terms as may be determined by the trustees;

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

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

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

20 § 1022-e. Acquisition of property, including the exercise of the power
21 of eminent domain. 1. The legislature hereby expressly finds and deter-
22 mines:

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

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

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

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

52 (e) If the authority determines that it is the assets of a downstate
53 utility corporation that should be taken, fair market value would not
54 constitute just compensation to such downstate utility corporation since
55 there is an insufficient market in the usual sense for its assets to
56 ascertain the value thereof from the market. In determining the compen-

1 sation payable for such assets, there shall be taken into consideration
2 the capitalization of such downstate utility corporation's expected
3 future earnings.

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

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

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

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

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

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

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

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

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

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

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

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

53 (d) The supreme court in the district in which such downstate utility
54 corporation has its principal office shall have exclusive jurisdiction
55 to hear and determine all claims arising from the acquisition of stock
56 by the exercise of the power of eminent domain and shall hear such

1 claims without a jury and without referral to a referee or commission-
2 ers. Notwithstanding the provisions of section nine hundred one of the
3 civil practice law and rules, upon motion to the court by the authority,
4 the condemnation proceeding for the acquisition of stock shall be main-
5 tained as a class action, pursuant to remaining provisions of article
6 nine of the civil practice law and rules, and the owners of the stock
7 shall be deemed a defendant class on the basis of the following express
8 legislative findings:

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

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

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

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

21 (v) the prosecution of separate actions by or against individual
22 members of the class would create a risk of inconsistent or varying
23 adjudications with respect to the issue of valuation and other issues
24 common to the class.

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

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

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

52 6. Procedure for acquisition of a downstate utility corporation
53 assets. (a) If the authority shall find it necessary or convenient to
54 acquire any real or personal property of such downstate utility corpo-
55 ration, other than securities, whether for immediate or future use, then
56 the authority need not determine that such property is required for

1 public use, since the legislature already has made such determination in
2 this title which determination shall be binding for all purposes. The
3 authority need not publish any notice of its intention to acquire such
4 property or hold any public hearing with respect thereto or to the
5 public use of such action.

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

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

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

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

50 (f) Should a downstate utility corporation's property be taken by the
51 exercise of the power of eminent domain and if such downstate utility
52 corporation shall have agreed upon the compensation to be paid therefor
53 in settlement of the proceeding, if, such downstate utility corporation
54 shall be entitled to payment of the agreed or awarded compensation with-
55 in one hundred eighty days after the date of the agreement upon the
56 amount of the compensation or of the entry of the award, together with

1 interest upon the amount of such compensation from the time of acquisi-
2 tion thereof by the authority to the date of payment of such compen-
3 sation; but such interest shall cease upon the service by the authority,
4 upon the person or corporation entitled thereto, of a fifteen days'
5 notice that the authority is ready and willing to pay the amount of such
6 compensation upon the presentation of proper proofs and vouchers. Such
7 notice shall be served personally or by registered mail and publication
8 thereof shall be made at least once a week for three successive weeks in
9 a daily newspaper of general circulation in the county in which such
10 property or any part thereof is located.

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

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

51 8. Upon the acquisition of all the outstanding shares of stock of a
52 corporate issuer representing all the voting rights and equity thereof,
53 the authority shall as soon as reasonably practicable take all steps
54 necessary to ensure that the rights and claims of all the holders of any
55 other stock and debt securities and all other creditors thereof are as
56 secure as they were immediately prior to the acquisition by the authori-

1 ty. Nothing herein shall prohibit the authority from taking any appro-
2 priate and prudent action to renegotiate and restructure such debt or
3 from purchasing the preferred stock and debt securities issued by such
4 corporation at such prices as the authority may determine. The authority
5 may also exchange its bonds for any outstanding preferred stock or debt
6 securities with the consent of the holders of such preferred stock or
7 debt securities.

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

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

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

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

1 such contract. Moneys held in trust or otherwise for the payment of
2 bonds or notes or other obligations or in any way to secure bonds or
3 notes or obligations and deposits of such moneys shall be secured in
4 full in direct obligations of the federal government the payment of
5 which is guaranteed by the United States of America. Such investments
6 shall be held on deposit only in banks having a minimum credit rating
7 and a minimum accumulated capital, as the trustees shall specify in the
8 by-laws or investment guidelines of the authority.

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

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

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

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

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

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

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

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

53 2. The authority shall submit a detailed annual report pursuant to and
54 as specified in section twenty-eight hundred of this chapter, and a copy
55 of such report shall be filed with the county executives of the counties
56 within the service area, and with the mayors and supervisors of the

1 municipalities within the service area and shall be made available to
2 the municipalities served by the authority and to the public. Nothing in
3 this section shall be deemed to exempt the authority from any rule or
4 regulation, including the public authorities law.

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

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

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

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

51 5. The bonds, notes or other obligations of the authority may be sold
52 at public or private sale for such price or prices as the authority
53 shall determine. For a private sale of its securities, the authority
54 shall obtain the written approval of the terms of such sale from the
55 comptroller if such sale is to a party other than the comptroller, or

1 from the director of the budget where such sale is to the comptroller,
2 in either case prior to closing the issuance transaction.

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

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

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

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

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

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

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

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

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

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

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

1 (k) any other provisions not inconsistent with those enumerated in
2 this subdivision and necessary to effect its issuances of bonds, notes
3 or other obligations and the rights of the holders of its securities, or
4 otherwise in furtherance of its corporate purposes.

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

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

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

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

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

52 12. The authority is authorized to obtain from any department or agen-
53 cy of the United States of America or the state or any nongovernmental
54 insurer or financial institution any insurance, guaranty or other credit
55 support device, to the extent available, as to, or for the payment or
56 repayment of interest or principal, or both, or any part thereof, on any

1 bonds, notes or other obligations issued by the authority and to enter
2 into any agreement or contract with respect to any such insurance or
3 guaranty, except to the extent that the same would in any way impair or
4 interfere with the ability of the authority to perform and fulfill the
5 terms of any agreement made with the holders of outstanding bonds, notes
6 or other obligations of the authority.

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

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

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

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

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

1 or agreement with holders of the bonds, notes or other obligations
2 issued under this article any provision which provides that a default
3 occurs as a result of the state or of a municipality exercising its
4 right to amend, modify, or repeal or otherwise alter any statute impos-
5 ing or relating to taxes, fees, or appropriations relating thereto.

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

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

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

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

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

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

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

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

1 2. In the event any party shall appeal an award of compensation for
2 the taking by the authority of stock or assets, such party shall post a
3 bond in such amount, if any, as the supreme court shall deem appropriate
4 to adequately protect the interests of the other party under all the
5 circumstances.

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

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

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

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

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

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

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

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

1 § 1022-r. Prevailing wage. Whenever the authority enters into any
2 contract, subcontract, lease, grant, bond, covenant or other agreement
3 for or in connection with any construction, demolition, reconstruction,
4 excavation, rehabilitation, repair, renovation, alteration, or improve-
5 ment project, such project shall be deemed to be a public works project
6 for the purposes of article eight of the labor law, and all of the
7 provisions of article eight of the labor law shall be applicable to all
8 the work involved in the construction, demolition, reconstruction, exca-
9 vation, rehabilitation, repair, renovation, alteration, or improvement
10 of such project. Funds, financial assistance, or any other benefits
11 provided pursuant to this article shall not be utilized for or in
12 connection with the construction, demolition, reconstruction, exca-
13 vation, rehabilitation, repair, renovation, alteration, or improvement
14 of any project to which the provisions of article eight of the labor law
15 are not applicable.

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

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

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

34 o. Downstate New York Power Authority

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