STATE OF NEW YORK

5527

2021-2022 Regular Sessions

IN SENATE

March 10, 2021

Introduced by Sen. BROOKS -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to establishing the South Nassau water authority

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 5-A to read as follows:

TITLE 5-A

SOUTH NASSAU WATER AUTHORITY

Section 1114-a. Short title.
1114-b. Definitions.
1114-c. South Nassau water authority district.
1114-d. South Nassau water authority.
1114-e. Powers of the authority.
1114-f. Transfer of officers and employees.
1114-g. Bonds of the authority.
1114-h. Remedies of bondholders.
1114-i. State and municipalities not liable on authority bonds.
1114-j. Moneys of the authority.
1114-k. Bonds; legal investments for fiduciaries.
1114-l. Agreement with the state.
1114-m. Exemption from taxes, assessments and certain fees; payments in lieu of taxes.
1114-n. Actions against the authority.
1114-o. Conflicts of interest of members of the board of directors and officers and employees of the authority.
1114-p. Construction and purchase contracts.
1114-q. Separability clause.
1114-r. Effect of inconsistent provisions.

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

LBD09799-03-1

1114-s. Acquisition by eminent domain.

§ 1114-a. Short title. This title shall be known and may be cited as the "South Nassau water authority act".

§ 1114-b. Definitions. As used or referred to in this title, unless a different meaning clearly appears from the context:

1. "Authority" shall mean the corporation created by section eleven hundred fourteen-d of this title.

2. "Board of directors" shall mean the governing board of the authority.

3. "Bonds" shall mean the bonds, notes or other evidences of indebtedness issued by the authority pursuant to this title.

4. "Calendar year" shall mean the twelve month period from January first through December thirty-first.

5. "Chief executive officer" when referring to a municipality shall mean the chief elected official of such municipality and, when referring to the authority, shall mean the chairperson of the authority.

6. "Civil service commission" shall mean the civil service commission of the county of Nassau.

7. "Comptroller" shall mean the comptroller of the state of New York.

8. "Construction" shall mean the negotiation, acquisition, erection, building, alteration, improvement, testing, increase, enlargement, extension, reconstruction, interconnection, renovation or rehabilitation of a water facility as defined in this section; the inspection and supervision thereof; and the engineering, architectural, legal, appraisal, fiscal, economic and environmental investigations, services and studies, surveys, designs, plans, working drawings, specifications, procedures and other actions incidental thereto.

9. "Costs", as applied to any project, shall include the cost of construction, the cost of the acquisition of all property, including both real, personal and mixed, the cost of demolishing, removing or relocating any buildings or structures on lands so acquired including the cost of acquiring any land to which such buildings or structures may be moved or relocated, the cost of all systems, facilities, machinery, apparatus and equipment, financing charges and bond discount, interest to the extent not paid or provided for from revenues or other sources, the cost of engineering and architectural surveys, plans and specifications, bond insurance, bond credit enhancement arrangements, other expenses necessary or incidental to the construction of such project and the financing of the construction thereof, including the cost of legal and financial advices and credit arrangements with banks or other financial institutions, the amount authorized in the resolution of the authority providing for the issuance of bonds to be paid into any reserve or special fund from the proceeds of such bonds and the financing of the placing of any project in operation, including the reimbursement to any municipality, state agency, the state, the United States government, or any other person for expenditures made by them that would be costs of the project hereunder, notwithstanding the fact that such expenditures may have been incurred prior to the effective date of this title.

10. "County" shall mean the county of Nassau.

11. "Distribution system" shall mean the water facility or facilities employed to deliver water from a transmission facility, or where there is no transmission facility, from a supply facility, to the ultimate consumers of water.

12. "District" shall mean the water authority of South Nassau water district created by section eleven hundred fourteen-c of this title.

13. "Governing body" shall mean:

(a) in the case of a city, county, town or village or district corporation, the finance board as such term is defined in the local finance law; or

(b) in the case of a public benefit corporation, the members thereof.

14. "Members" shall mean the members of the board of directors.

15. "Municipality" shall mean any city, county, town, village or county or town acting on behalf of an improvement district.

16."Real property" shall mean lands, structures, franchises and interests in land, waters, lands under water, groundwater riparian rights and air rights and any and all things and rights customarily included within the term "real property" and includes not only fee simple absolute, but also any and all lesser interests including, but not limited to, easements, rights of way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise.

17. "State sanitary code" shall mean regulations adopted pursuant to section two hundred twenty-five of the public health law.

18. "State" shall mean the state of New York.

19. "State agency" shall mean any state office, public benefit corporation, department, board, commission, bureau or division, or other agency or instrumentality of the state.

20. "Supply facility" shall mean a water facility employed to make groundwater or surface water available for delivery into a transmission facility or distribution system.

21. "System revenues" shall mean all rates, rents, fees, charges, payments and other income and receipts derived from users of the authority without limiting the generality of the foregoing, investment proceeds and proceeds of insurance, condemnation, sales or other dispositions of assets, together with all federal, state or municipal aid as well as any other income derived from the operation of the water facility of the authority.

22. "Transmission facility" shall mean a water facility used to carry water from a supply facility to a distribution system.

23. "Treasurer" shall mean the treasurer of the authority.

24. "Water facility" or "water facilities" shall mean any plants, structures and other real and personal property acquired, rehabilitated or constructed for the purpose of supplying, transmitting, distributing or treating water, including but not limited to surface or groundwater reservoirs, basins, dams, canals, aqueducts, standpipes, conduits, pipelines, mains, pumping stations, water distribution systems, compensating reservoirs, intake stations, waterworks or sources of water supply, wells, purification or filtration plants or other treatment plants and works, connections, water meters, rights of flowage or diversion and other plants, structures, equipment, towers, conveyances, real or personal property or rights therein and appurtenances thereto necessary or useful and convenient for the accumulation, supply, transmission, treatment or distribution of water.

25. "Water project" shall mean any water facility, including the planning, development, financing or construction thereof.

26. "Watershed rules" shall mean the rules and regulations made by the department of health pursuant to section eleven hundred of the public health law.

§ 1114-c. South Nassau water authority district. 1. There is hereby created a district to be known as the "South Nassau water authority

district" which shall be defined as all that portion of Nassau county being serviced by the New York American water service corporation as its Long Island Water operations district as of the effective date of this title, and lying south of the area serviced by the Town of Hempstead Department of Water.

§ 1114-d. South Nassau water authority. 1. A corporation known as "South Nassau water authority" is hereby created for the purposes and charged with the duties and having the powers provided in this title. The authority shall be a corporate governmental agency constituting a public benefit corporation and shall be a "public district" for the purposes of section eighty-nine of the public service law. The authority shall be governed by a board of directors consisting of five members. The governing board of the town of Hempstead shall appoint three members, and the Nassau county legislature shall appoint two members who are residents serviced by the water authority of South Nassau. Each member shall serve for a period of two years. Each chief executive officer shall file with the secretary of state a certificate of appointment or reappointment of any member appointed or reappointed by such chief executive officer within thirty days of the appointment or reappointment. Members shall receive no compensation for their services but shall be entitled to reimbursement of their necessary expenses, including traveling expenses, incurred in the discharge of their duties. Nothing in this section shall be construed as preventing a chief executive officer of a municipality from appointing himself or herself to be a member of the board of directors.

2. If the authority decides to enter into a contract to purchase or otherwise acquire an interest in the New York American water service corporation or to initiate a condemnation proceeding pursuant to the eminent domain procedure law for the area it services within the South Nassau water authority district, prior to entering into any contract to purchase or otherwise acquire an interest in the New York American water service corporation or the initiation of any condemnation proceeding by the authority pursuant to the eminent domain procedure law for the area it services within the South Nassau water authority district, the authority shall provide ratepayers within the area serviced by the New York American water service corporation and the public with public forums for the expression and discussion of views regarding such purchase, acquisition or condemnation of the New York American water service corporation. The authority shall hold at least one forum in the town of Hempstead.

3. If the authority decides to enter into a contract to purchase or otherwise acquire an interest in the New York American water service corporation or to initiate a condemnation proceeding pursuant to the eminent domain procedure law for the area it services within the South Nassau water authority district, the authority is authorized to provide registered voters within the area serviced by the New York American water service corporation within the South Nassau water authority district prior to entering into such contract to purchase or otherwise acquire an interest in the New York American water service corporation or the initiation of any condemnation proceeding by the authority pursuant to the eminent domain procedure law for the area the New York American water service corporation services within the South Nassau water authority district, with a nonbinding referendum, regarding whether the authority should enter into a contract to purchase or otherwise acquire an interest in the New York American water service corporation or initiate condemnation proceedings pursuant to the eminent domain procedure

law for the area it services within the South Nassau water authority district. The proposition shall be placed on the ballot and voted upon at a special election on a date to be determined by the Nassau county board of elections.

4. Any one or more of the members of the board of directors may be an official or an employee of a municipality situated within the district. In the event that an official or an employee of such municipality shall be elected as a member of the board of directors, acceptance or retention of such appointment shall not be deemed a forfeiture of his or her municipal office or employment, or incompatible therewith or affect his or her tenure or compensation in any way.

5. No action shall be taken by the authority except pursuant to the favorable vote of a simple majority of the board of directors.

6. The powers of the authority shall be vested in and shall be exercised by the board of directors at a meeting duly called and held. Three members of the board of directors, who together are authorized to cast a majority of the vote, shall constitute a quorum. The board of directors may delegate to one or more of its members, or to one or more of the officers, agents or employees of the authority, such powers and duties as it may deem proper.

7. The officers of the authority shall consist of a chairperson, vice chairperson, deputy chairperson, treasurer, and secretary, who shall not be members of the board of directors. The officers of the authority shall be appointed by the board of directors. The board of directors may appoint and at its pleasure remove an attorney and an engineer, which positions, in addition to the officers above named, shall be in the exempt class of the civil service and such additional officers and employees as it may require for the performance of its duties, fix and determine their qualifications, duties, compensations and terms of office or tenure, subject to the provisions of the civil service law of the state and such rules as the civil service commission may adopt and make applicable to the authority. The authority may also from time to time contract for expert professional services. The duties of the officers shall be as follows:

(a) Chairperson. The chairperson shall be the chief executive officer of the authority and it shall be the responsibility of the chairperson to:

(i) preside at all meetings of the board of directors and of the officers;

(ii) manage the water facility, the transmission facility and the distribution system and to effectuate the decisions of the board of directors;

(iii) exercise supervision over the conduct of the officers and employees of the authority;

(iv) report annually to each customer, either by mail or by publication once in a newspaper having general circulation within the district; such report shall include but not be limited to the following information:

(1) a brief financial account on operations of the water system including, but not limited to, water rates, total revenues, operating and maintenance expenses, and interest on bonds and notes;

(2) the population served by the authority;

(3) the number of wells, towers and other storage facilities operated by the authority;

(4) the total pumpage of groundwater including the amount received through interdistrict interconnections and the estimated amount lost from the system;

(5) the single highest level from each well of each synthetic organic chemical, nitrate and chloride constituent tested for by the authority at any time during the year which exceeds the applicable county water quality standard or guideline, that standard or guideline, the site of each well at which each reported constituent was found, and the date on which each reported constituent was analyzed;

(6) the highest level from each well of each synthetic organic chemical, nitrate and chloride constituent tested for by the authority at any time during the year which does not exceed the applicable county water standard or guideline, but which contains a level equal to or greater than two-thirds of the amount permitted before exceeding a standard or guideline, that standard or guideline, the site of each well at which each reported constituent was found and the date on which each reported constituent was analyzed;

(7) once every five years, the highest level of any constituent discovered within the distribution system which contains a level equal to or greater than two-thirds of the amount permitted before exceeding a standard or guideline, that standard or guideline, and the resulting action taken by the authority;

(8) any well restricted, removed from service or otherwise limited in its use and the cause for such action;

(9) any actions taken to secure new supplies or replace lost capacity;

(10) the types of treatment which the water receives before entering the distribution system;

(11) any compliance activities required by regulations of the department of environmental conservation or the department of health or any local health department and any instances of noncompliance;

(12) the present condition of the distribution system and any significant actions, as determined by the authority, to improve or maintain the system;

(13) any special public services the authority provides during the year; and

(14) information on water conservation measures customers can implement, such as, but not limited to, retrofitting plumbing fixtures, altering irrigation timing, using irrigation sensors, leak detection, proper use of water-consuming appliances, daily conscientious use of water and estimated savings of water, energy, and money, from use of these measures;

(v) execute all contracts in the name of the authority;

(vi) institute, at the direction of the board of directors, all civil actions in the name of the authority;

(vii) provide for the enforcement of all of the rules and regulations of the authority and cause all violations thereof to be prosecuted;

(viii) sign orders to pay claims when authorized by the board of directors;

(ix) sign checks in the absence or inability of the treasurer or deputy treasurer, if any, when authorized by the board of directors; and a certified copy of a resolution of the board of directors to that effect shall be notice to the depository of such authorization;

(x) appoint, subject to the approval of the board of directors, nonelected officers, counsel, accountants, and other financial advisors, engineers and other technical advisors;

(xi) employ, promote and discharge managers, supervisors and employees; and

(xii) take all other reasonable and necessary actions to carry out his or her office as the chief executive of the authority. If the chairperson has not been appointed as a member of the board of directors of the authority pursuant to this section, such chairperson shall be deemed an ex officio member of the board of directors. Such status shall not carry with it the right to vote on matters coming before the board of directors nor shall the presence of such chairperson be counted for the purpose of determining a quorum.

(b) Vice chairperson. The vice chairperson shall perform all duties delegated to him or her by the chairperson and, in the absence or during the disability of the chairperson, the vice chairperson shall act as chairperson.

(c) Deputy chairperson. The deputy chairperson shall perform all duties delegated to him or her by the chairperson or the vice chairperson.

(d) Secretary. (i) The secretary shall be the recording and corresponding officer of the authority and the custodian of the records of the authority.

(ii) The secretary shall prepare and send required notices of all meetings when directed to do so by the chairperson or by the written request of four members who have specified the issues to be discussed at the meeting.

(iii) In the absence or disability of the secretary, the chairperson may appoint a temporary secretary.

(e) Treasurer. (i) The treasurer shall have custody of all moneys belonging to the authority and keep accounts of all receipts and expenditures in conformance with a uniform system of accounts formulated and prescribed by the comptroller pursuant to section thirty-six of the general municipal law.

(ii) The treasurer shall execute a bond, conditioned upon the faithful performance of the duties of his or her office, the amount and sufficiency of which shall be approved by the board of directors and the premium therefor shall be paid by the authority.

(iii) The treasurer shall deposit, within ten days after receipt thereof, in the name of the authority, in one or more banks, and/or trust companies, designated by the board of directors, all moneys received by him or her.

(iv) The treasurer may sign checks with the facsimile signature of the treasurer, as reproduced by a machine or device commonly known as a checksigner, when authorized by the board of directors.

(v) The treasurer shall pay out moneys from the authority treasury only as authorized by the board of directors and by law. All such payments, except as may be authorized by the board of directors for a petty cash account, shall be by check.

(vi) The treasurer shall issue a report on the finances of the authority at each regular meeting of the board of directors.

(vii) The treasurer shall file in the office of the authority, within sixty days after the end of the fiscal year, a statement showing in detail all revenues and expenditures during the previous fiscal year and the outstanding indebtedness of the authority as of the end of the fiscal year. The members shall, within ten days, cause to be published once in a newspaper having general circulation within the district, a notice that the annual financial statement has been filed and is available for inspection or a summary of such statement in a form approved by

the comptroller, with an endorsement thereon that details thereof are on file in the office of the authority. The members shall cause to be audited by a certified public accountant engaged for that purpose, such report and supporting records.

8. The terms of the chairperson, vice chairperson and deputy chairperson first appointed shall be staggered, the chairperson first appointed shall serve for a period of four years, the vice chairperson first appointed shall serve for a period of three years and the deputy chairperson first appointed shall serve for a period of two years; thereafter their successors shall serve for terms of four years. The remaining officers shall each serve terms of one year. The board of directors shall have the right, at any time, to extend any such term, for a period of months, to provide that such term terminates contemporaneously with the end of the fiscal year of the authority.

9. The officers of the authority shall receive such compensation for their services as shall be fixed by the board of directors and shall be reimbursed for all necessary and actual expenses incurred in connection with their duties as such officers and in connection with the carrying out of the purposes of this title.

10. The authority and its corporate existence shall continue until terminated by law; provided, however, that no such law shall take effect so long as the authority shall have bonds or other obligations outstanding unless adequate provision has been made for the payment or satisfaction thereof. Upon termination of the existence of the authority, all of the rights and properties of the authority then remaining shall pass to and vest in the municipalities within the district. Such property shall be apportioned and distributed among the municipalities within the district in direct proportion to their voting on the date of the termination of the authority.

11. In addition to any powers granted to it by law, the governing body of each of the municipalities within the district, from time to time, may appropriate sums of money to defray project costs or any other costs and expenses of the authority. Subject to the rights of bondholders, each governing body may determine if the moneys so appropriated shall be subject to repayment by the authority to the municipalities, and in such event, the manner and time or times for such repayment.

12. Neither the public service commission nor any other board or commission of like character, shall have jurisdiction over the authority in the management and control of its properties or operations or any power over the regulation of rates fixed or charges collected by the authority.

13. It is hereby determined and declared that the authority and the carrying out of its powers, purposes and duties are in all respects for the benefit of the people of the municipalities within the district and state, for the improvement of their health, welfare and prosperity and that the said purposes are public purposes and that the authority is and will be performing an essential governmental function in the exercise of the powers conferred upon it by this title.

§ 1114-e. Powers of the authority. Except as otherwise limited by this title, the authority shall have the power to:

1. sue and be sued;

2. have a seal and alter the same at pleasure;

3. borrow money and issue negotiable or non-negotiable notes, bonds, or other obligations and to provide for the rights of the holders thereof;

4. enter into contracts and execute all instruments necessary or convenient or desirable for the purposes of the authority to carry out any powers expressly given to it in this title;

5. acquire, by purchase, gift, grant, transfer, contract or lease or by condemnation pursuant to the eminent domain procedure law, lease as lessee, hold and use and to sell, lease as lessor, transfer or otherwise dispose of, any real or personal property or any interest therein, within or without the district, but within the territorial limits of the town of Hempstead, as the authority may deem necessary, convenient or desirable to carry out the purpose of this title; provided, however, that the authority may not condemn real property of a municipality without the consent of the governing body of such municipality;

6. purchase, in the name of the authority, any water supply system, including plants, works, instrumentalities or parts thereof and appurtenances thereto, lands, easements, rights in land and water rights, rights-of-way, contract rights, franchises, permits, approaches, connections, dams, wells, pumps, reservoirs, water mains and pipe lines, pumping stations, treatment facilities, meters, equipment and inventory, or any other property incidental to and included in such system or part thereof, and any improvements, extensions and betterments, situated wholly within the district, provided, however, that the authority shall have the power to purchase any source of supply, or water supply system or any part thereof situated wholly or partly without the territorial limits of the district, provided same shall be necessary in order to supply water within the district and in connection with the purchase of such properties the authority may assume any obligations of the owner of such properties and, to the extent required by the terms of any indentures or other instruments under which such obligations were issued, the authority may assume and agree to perform covenants and observe the restrictions contained in such instruments; and furthermore the owner of any properties, which the authority is authorized to acquire, is hereby authorized to sell or otherwise transfer the same to the authority, whereupon the authority shall become charged with the performance of all public duties with respect to such properties with which such owner was charged and such owner shall become discharged from the performance thereof, as a means of so acquiring for such purpose, the authority may purchase all of the stock of any existing privately owned water corporation or company and in the case of a sale or other transfer of properties of a public utility corporation pursuant to this provision, upon the purchase of the stock of such corporation or company it shall be lawful to dissolve such corporation within a reasonable time;

7. construct, improve or rehabilitate water supply facilities required for the maintenance, development or expansion of water supply sources;

8. operate and manage and to contract for the operation and management of facilities of the authority;

9. enter into contracts, and carry out the terms thereof, for the wholesale provision of water produced by supply facilities constructed and operated by the authority, to municipalities and private water companies and to carry out the terms thereof, for the transmission of water from new or existing supply facilities;

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

11. take all necessary and reasonable actions within the district to conserve, preserve and protect the water supply to the district, including the making of plans and studies, the adoption of watershed rules and regulations, the enforcing of compliance with all current and future rules and regulations of the state sanitary code with regard to water supply and usage, the requiring of cross-connection controls, the providing of educational material and programs to the public, and the cooperating with water suppliers outside the district to conserve, preserve and protect the entire water reserve as it is affected within and outside the authority's supply area;

12. retain or employ counsel, auditors, engineers and private consultants on a contract basis or otherwise for rendering professional or technical services and advice;

13. make plans and studies necessary, convenient or desirable for the effectuation of the purposes and powers of the authority and to prepare recommendations in regard thereto;

14. prepare a water supply emergency plan which shall include, but not be limited to, the following:

(a) establishment of criteria and procedures to determine critical water levels or safe yield of system;

(b) identification of existing and future sources of water under normal conditions and emergency conditions;

(c) system capacity and ability to meet peak demand and fire flows concurrently;

(d) storage capacities;

(e) current condition of present interconnections and identification of additional interconnections to meet a water supply emergency;

(f) a specific action plan to be followed during a water supply emergency including a phased implementation of the plan;

(g) general water conservation programs and water use reduction strategies for water supply users;

(h) prioritization of water users;

(i) identification and availability of emergency equipment needed during a water supply emergency; and

(j) a public notification program coordinated with the phased implementation schedule; such plan shall not be adopted until a public hearing on such plan shall have been held, upon not less than fourteen days' notice thereof to each customer, either by mail or by publication once in a newspaper having general circulation within the district; every five years, such plan shall be reviewed and revised if necessary after a public hearing, with notice to each customer as aforesaid;

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

16. apply for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof, or from the state or any agency or instrumentality thereof, or from any other source, for any or all of the purposes specified in this title, and to comply, subject to the provisions of this title, with the terms and conditions thereof;

17. obtain, store, treat, distribute, supply and sell water for domestic, commercial and public purposes at retail to individual consumers within the district;

18. purchase water from any municipal corporation, town water district, person, association or corporation;

19. produce, develop, distribute and sell water or water services within or without the territorial limits of the district; provided, however, that water may be sold at retail to individual consumers only within the district and further provided that in exercising the powers granted by this title, the authority shall not sell water in any area which is served by a water system owned or operated by a municipality or special improvement district unless the governing body of such municipality or district shall adopt a resolution requesting the authority to sell water in such served areas;

20. make bylaws for the management and regulation of its affairs and rules and regulations for the conservation, preservation and protection of the authority's water supply and, subject to agreements with bondholders, rules for the sale of water and the collection of rents and charges therefor. A copy of such rules, regulations and bylaws and any rules and regulations adopted pursuant to subdivision eleven of this section, and all amendments thereto, duly certified by the secretary of the authority shall be filed in the office of the municipalities within the district and thereafter published once in a newspaper having general circulation within the district. Violations of such rules and regulations shall be punishable by fine, not exceeding fifty dollars, or by imprisonment for not longer than thirty days, or both;

21. fix rates and collect charges for the use of the facilities of, or services rendered by, or any commodities furnished by the authority such as to provide revenues sufficient at all times to pay, as the same shall become due, the principal and interest on the bonds, or other obligations of the authority together with the maintenance of proper reserves therefor, in addition to paying as the same shall become due, the expense of operating and maintaining the properties of the authority together with proper maintenance reserves, capital reserves, repair reserves, tax stabilization reserves and other contingency reserves, and all other obligations and indebtedness of the authority; however, no such rates or charges shall be changed until a public hearing on such changes shall have been held upon not less than fourteen days' notice thereof to each customer, either by mail or by publication once in a newspaper having general circulation within the district;

22. enter into cooperative agreements with other authorities, municipalities, counties, cities, towns, villages, water districts, utility companies, individuals, firms or corporations, within or without the territorial limits of the district for the interconnection of facilities, the exchange or interchange of services and commodities, the conservation, preservation and protection of the authority's water reserve as it is affected within and outside the authority's supply area, and, within the territorial limits of the district, to enter into a contract for the construction, operation and maintenance of a water supply and distribution system by the authority for any municipality having power to construct and develop a water supply and distribution system, upon such terms and conditions as shall be determined to be reasonable including, but not limited to the reimbursement of all costs of such construction, or for any other lawful purposes necessary or desirable to effect the purposes of this title;

23. provide for the discontinuance or disconnection of the supply of water for nonpayment of fees, rates, rents or other charges therefor imposed by the authority, provided such discontinuance or disconnection of any supply of water shall not be carried out except in the manner and upon the notice as is required of a waterworks corporation pursuant to

subdivisions three-a, three-b and three-c of section eighty-nine-b and section one hundred sixteen of the public service law;

24. contract for, provide and maintain such insurance as it deems necessary or reasonable to:

(a) secure and protect its real and personal property from fire, theft or other calamity or loss;

(b) secure and protect it against liability imposed by law for damages for injuries to persons or property;

(c) secure and protect it against any liability which may be imposed pursuant to section eighteen of the public officers law; and

(d) secure and protect it against any other liability, casualty or loss as it deems necessary or reasonable; and

25. do all things necessary, convenient or desirable to carry out its purposes and for the exercise of the powers granted in this title.

§ 1114-f. Transfer of officers and employees. Any public officer or employee under civil service, selected by the authority may, with the consent of the commission, board, department or municipality by which he or she has been employed, be transferred to the authority and shall be eligible for such transfer and appointment without examination to comparable offices, positions and employment under the authority. The salary or compensation of any such officer or employee shall after such transfer be paid by the authority, but notwithstanding the provisions of this title, any such officers or employees so transferred to the authority, pursuant to the provisions of this section, who are members of or beneficiaries under any existing pension or retirement system, shall continue to have all rights, privileges, obligations and status with respect to such fund system or systems as are now prescribed by law, but during the period of their employment by the authority, all contributions to any pension or retirement fund or system to be paid by the employer on account of such officers and employees, shall be paid by the authority; and all such officers and employees who have been appointed to positions under the rules and classifications of the civil service commission shall have the same status with respect thereto after transfer to the authority as they had under their original appointments. The appointment and promotion of all employees of the authority shall be made in accordance with the provisions of the civil service law and such rules as the civil service commission may adopt and make applicable to the authority.

§ 1114-g. Bonds of the authority. 1. The authority shall have the power and is hereby authorized from time to time to issue bonds, in conformity with applicable provisions of the uniform commercial code, in such principal amounts as it may determine to be necessary to pay the cost of any water project or projects or for any other corporate purposes, including incidental expenses in connection therewith. The authority shall have power from time to time to refund any bonds by the issuance of new bonds whether the bonds to be refunded have or have not matured, and may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose. Bonds issued by the authority may be general obligations secured by the faith and credit of the authority or may be special obligations payable solely out of particular revenues or other moneys of the authority as may be designated in the proceedings of the authority under which the bonds shall be authorized to be issued, subject to any agreements with the holders of outstanding bonds pledging particular revenues or moneys.

2. The authority is authorized to obtain from any department or agency of the United States of America or nongovernmental insurer any insurance or guaranty, or any other credit enhancement arrangement with any bank

or other financial institution to the extent now or hereafter available, as to, or for the payment or repayment of interest or principal, or both, or any part thereof, on any bonds issued by the authority and to enter into any agreement or contract with respect to any such insurance or guaranty, except to the extent that the same would in any way impair or interfere with the ability of the authority to perform and fulfill the terms of any agreement made with the holders of the bonds of the authority.

3. Bonds shall be authorized by resolution of the authority, and may be in such denominations and bear such date or dates and mature at such time or times as such resolution may provide except that bonds and any renewal thereof shall mature within forty years of the date of their original issuance and notes and any renewal thereof shall mature within five years of the date of their original issuance. Such bonds shall be subject to such terms of redemption, bear interest at such rate or rates, which may vary from time to time, as may be necessary to effect the sale thereof and shall be payable at such times, be in such form, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms and conditions as such resolution may provide. Bonds may be sold at public sale or at private sale for such price or prices as the authority shall determine, provided that no issue of bonds may be sold at private sale unless the terms of such sale shall have been approved in writing by:

(a) the comptroller, where such sale is not to the comptroller; or

(b) the director of the division of the budget of the state, where such sale is to the comptroller.

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

(a) pledging all or part of its revenues, together with any other moneys, securities, contracts or property, to secure the payment of the bonds, subject to such agreements with bondholders as may then exist;

(b) the rates, rentals, fees and other charges to be fixed and collected and the amounts to be raised in each year thereby, and the use and disposition of the earnings and other revenues;

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

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

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

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

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

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

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

(j) vesting in a trustee or trustees such properties, rights, powers and duties in trust as the authority may determine, which may include

any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to section eleven hundred fourteen-h of this title and limiting or abrogating the rights of the bondholders to appoint a trustee under such section or limiting the rights, duties and powers of such trustee;

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

(l) limitations on the power of the authority to sell or otherwise dispose of any system or any part thereof or other property;

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

(n) the protection and enforcement of the rights and remedies of the bondholders;

(o) the obligations of the authority in relation to the construction, maintenance, operation, repairs and insurance of the properties, the safeguarding and application of all moneys and as to the requirements for the supervision and approval of consulting engineers in connection with construction, reconstruction and operation;

(p) the payment of the proceeds of bonds, revenues and other moneys to a trustee or other depository, and for the method of disbursement thereof with such safeguards and restrictions as the authority may determine; and

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

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

6. Any provision of the uniform commercial code to the contrary notwithstanding, any pledge of or other security interest in revenues, moneys, accounts, contract rights, general intangibles or other personal property made or created by the authority shall be valid, binding and perfected from the time when such pledge is made or other security interest attaches without any physical delivery of the collateral or further act, and the lien of any such pledge or other security interest shall be valid, binding and perfected against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether or not such parties have notice thereof. No instru-

ment by which such a pledge or security interest is created nor any financing statement need be recorded or filed.

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

8. Neither the members of the board of directors nor the officers of the authority nor any person executing bonds shall be liable personally thereon or be subject to any personal liability or accountability solely by reason of the issuance thereof.

9. The authority, subject to such agreements with bondholders as then may exist, shall have power out of any moneys available therefor to purchase bonds of the authority in lieu of redemption, at a price not exceeding:

(a) if the bonds are then redeemable, the redemption price then applicable, plus accrued interest to the next interest payment date; or

(b) if the bonds are not then redeemable, the redemption price then applicable on the first date after such purchase upon which the bonds become subject to redemption plus accrued interest to the next interest payment date.

10. The authority shall have power and is hereby authorized to issue negotiable bond anticipation notes in conformity with applicable provisions of the uniform commercial code and may renew the same from time to time but the maximum maturity of any such note, including renewals thereof, shall not exceed five years from the date of issue of such original note. Such notes shall be paid from any moneys of the authority available therefor and not otherwise pledged or from the proceeds of sale of the bonds of the authority in anticipation of which they were issued. The notes shall be issued in the same manner as the bonds and such notes and the resolution or resolutions authorizing the same may contain any provisions, conditions or limitations which the bonds or bond resolution of the authority may contain. Such notes may be sold at public sale or, upon the approval of the comptroller of the terms thereof, at private sale. Such notes shall be as fully negotiable as the bonds of the authority.

§ 1114-h. Remedies of bondholders. 1. In the event that the authority shall default in the payment of principal of or interest on any issue of the bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the authority shall fail or refuse to comply with the provisions of this title, or shall default in any agreement made with the holders of any issue of the bonds, the holders of twenty-five per centum in aggregate principal amount of the bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the applicable county and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds for the purposes herein provided.

2. Such trustee may, and upon written request of the holders of twenty-five per centum in principal amount of such bonds outstanding shall, in his or her own name:

(a) by action or proceeding in accordance with the civil practice law and rules, enforce all rights of the bondholders and require the authority to carry out any other agreements with the holders of such bonds and to perform its duties under this title;

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

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

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

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

3. Such trustee shall in addition to the foregoing have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incidental to the general representation of bondholders in the enforcement and protection of their rights.

4. The state supreme court, county of Nassau and the state shall have jurisdiction of any action or proceeding by the trustee on behalf of such bondholders.

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

§ 1114-i. State and municipalities not liable on authority bonds. Neither the state nor any municipality shall be liable on the bonds of the authority and such bonds shall not be a debt of the state or of any municipality.

§ 1114-j. Moneys of the authority. All moneys of the authority from whatever source derived shall be paid to the treasurer and shall be deposited forthwith in one or more banks and/or trust companies in the state designated by the authority. The moneys in such accounts shall be paid out on checks of the treasurer upon requisition by the chairperson of the authority or of such other officer or officers as the authority may authorize to make such requisitions. All deposits of such moneys shall be secured by obligations of or guaranteed by the United States of America or of the state of a market value equal at all times to the amount on deposit and all banks and trust companies are authorized to give such security for such deposits. Any moneys of the authority not required for immediate use or disbursement may, at the discretion of the authority, be invested in those obligations specified pursuant to the provisions of section ninety-eight-a of the state finance law. The authority shall have power, notwithstanding the provisions of this section, to contract with the holders of any bonds as to the custody, collection, security, investment and payment of any moneys of the authority or any moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds. Moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of such moneys may be secured in the same manner as moneys of the authority and all banks and trust companies are authorized to give such security for such deposits.

§ 1114-k. Bonds; legal investments for fiduciaries. The bonds of the authority are hereby made securities in which all public officials and bodies of the state and all municipalities, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, investment companies and other persons carrying on a banking business, and administrators, guardians, executors, trustees and other fiduciaries and all other persons whatsoever, who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. The bonds are

also hereby made securities which may be deposited with and may be received by all public officers and bodies of the state and all municipalities for any purposes for which the deposit of bonds or other obligations of the state is now or hereafter may be authorized.

§ 1114-l. Agreement with the state. The state does hereby pledge to and agree with the holders of any bonds issued by the authority pursuant to this title that the state will not alter or limit the rights hereby vested in the authority to fulfill the terms of any agreement made with or for the benefit of the holders of bonds or in any way impair the rights and remedies of bondholders until the bonds together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with bondholders.

§ 1114-m. Exemption from taxes, assessments and certain fees; payments in lieu of taxes. 1. It is hereby determined that the creation of the authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of the state and is a public purpose, and the authority shall be regarded as performing a governmental function in the exercise of the powers conferred upon it by this title and shall not be required to pay any taxes, special ad valorem levies or special assessments upon any real property owned by it or any filing, recording or transfer fees or taxes in relation to instruments filed, recorded or transferred by it or on its behalf.

2. The authority may pay, or may enter into agreements with any municipality to pay, a sum or sums annually or otherwise or to provide other considerations to such municipality with respect to real property owned by the authority located within such municipality and constituting a part of its water system.

3. Any bonds issued pursuant to this title together with the income therefrom shall be exempt from taxation except for transfer and estate taxes. The revenues, moneys and all other property and all activities of the authority shall be exempt from all taxes and governmental fees or charges, whether imposed by the state or any municipality, including without limitation real estate taxes, income taxes, franchise taxes, sales taxes or other excise taxes.

4. The state hereby covenants with the purchasers and with all subsequent holders and transferees of bonds issued by the authority pursuant to this title, in consideration of the acceptance of and payment for the bonds, that the bonds of the authority issued pursuant to this title and the income therefrom shall be exempt from such taxation, as stated in subdivision three of this section, and that all revenues, moneys, and other property pledged to secure the payment of such bonds shall at all times be free from such taxes as stated in such subdivision.

5. Notwithstanding the provisions of subdivisions one, two, three and four of this section, nothing herein shall prevent the state from assessing a tax or surcharge against the water customers based on their water consumption, provided, however, that all such taxes and surcharges and the authority's obligation to collect and pay such taxes and surcharges shall be subordinate to the rights of holders of all of the authority's bonds and notes and to the payment of principal, premiums if any, and interest thereon.

§ 1114-n. Actions against the authority. 1. Except in an action for wrongful death, no action or proceeding shall be prosecuted or maintained against the authority for personal injury or damage to real or

personal property alleged to have been sustained by reason of the negligence or wrongful act of the authority or any member, officer, agent or employee thereof, unless:

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

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

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

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

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

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

4. The rate of interest to be paid by the authority or water board upon any judgment for which it is liable, other than a judgment against the authority on its bonds, shall not exceed the rate of interest on judgments and accrued claims against municipal corporations as provided in the general municipal law from time to time. Interest on payments of principal or interest on any bonds in default shall accrue at the rate borne by such bonds from the date thereof until paid or otherwise satisfied.

§ 1114-o. Conflicts of interest of members of the board of directors and officers and employees of the authority. No member of the board of directors or officer or employee of the authority shall have any interest in any contract, or take any action or otherwise involve himself or herself in any activity which, pursuant to article eighteen of the general municipal law, would be deemed a conflict of interest for a municipal officer or employee holding a position with a municipality similar to the position held by the member, officer or employee with the authority.

§ 1114-p. Construction and purchase contracts. The authority shall let contracts for construction or purchase of supplies, materials, or equipment pursuant to section one hundred three of the general municipal law. Nothing in this section shall be construed to limit the power of the authority to do any construction directly by the officers, agents and employees of the authority or to contract with a public utility, for a term not to exceed five years, for the operation and maintenance of a water supply system acquired from said public utility.

§ 1114-q. Separability clause. If any section, clause or provision in this title shall be held by a competent court to be unconstitutional or ineffective in whole or in part, to the extent that it is not unconsti-

tutional or ineffective, it shall be valid and effective, and no other section, clause or provision shall on account thereof be deemed invalid or ineffective.

§ 1114-r. Effect of inconsistent provisions. Insofar as the provisions of this title are inconsistent with the provisions of any other law, general, special or local, or of any charter or any local ordinance or resolution of any municipality, the provisions of this title shall be controlling, provided that nothing contained in this title shall be held to supplement or otherwise expand the powers or duties of the authority otherwise set forth in this title. Nothing contained in this title shall be held to alter or abridge the powers and duties of the department of environmental conservation or the department of health.

§ 1114-s. Acquisition by eminent domain. Notwithstanding any provision of the eminent domain procedure law to the contrary, in any proceeding brought by the authority pursuant to said law, title shall vest in the authority and compensation shall be paid only:

1. upon a decision by the supreme court that compensation for the property so condemned shall be determined solely by the income capitalization method of valuation, based on the actual net income as allowed by the public service commission; and

2. upon such court's determination of the amount of such compensation, based upon the income capitalization method, entry of the final judgment, the filing of the final decree, and the conclusion of any appeal or expiration of the time to file an appeal related to the condemnation proceeding. Should any court determine that a method of compensation other than the income capitalization method be utilized, or if the proposed award is more than the rate base of the assets taken in condemnation as utilized by the public service commission in setting rates and as certified by the public service commission, the authority may withdraw the condemnation proceeding without prejudice or costs to any party.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law.