STATE OF NEW YORK

7805

2021-2022 Regular Sessions

IN ASSEMBLY

May 21, 2021

Introduced by M. of A. CYMBROWITZ -- read once and referred to the Committee on Housing

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

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

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

ARTICLE XIV

NEW YORK CITY PUBLIC HOUSING PRESERVATION TRUST

Section 600. Short title.
601. Legislative findings.
602. Definitions.
603. New York city public housing preservation trust.
604. Powers and duties of the trust.
605. Transfer of property.
606. Exemption from land use review procedures and other requirements.
607. Resident protections and opportunities.
608. Compliance with codes.
609. Contracts of the trust.
610. Alternative project delivery contracts.
611. Additional authority.
612. Additional requirements for alternative project delivery contracts.

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

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613. Borrowing by the trust and for its benefit; effects of certain defaults.
614. Resources of the trust.
615. Legal investment and deposit.
616. Tax exemption and tax contract by the state.
617. Actions against the trust.
618. Civil service and pension system membership.
619. Collective negotiation.
620. Application of state and local human rights laws.
621. Limited liability.
622. Audit and annual reports.
623. Jurisdiction over trust.
624. Effect of inconsistent provisions.
625. Severability.

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

§ 601. Legislative findings. The legislature hereby finds and declares that significant capital investment is required to design, develop, construct, reconstruct, improve, modernize, rehabilitate, and repair the aging buildings owned or operated by the New York city housing authority which are deteriorating due to decades of diminishing capital investment. Restrictions relating to the New York city housing authority's construction process, and its inability to utilize innovative project delivery methods, have exacerbated its capital needs. A new public entity with greater flexibility to leverage capital investment and to manage the rehabilitation of these properties must be established. Repairing, modernizing, and improving New York city housing authority buildings must begin immediately so that hundreds of thousands of New Yorkers can reside in affordable housing that is decent, safe, sanitary, and in good repair. Establishing a new public entity, and transferring a leasehold interest in the buildings owned and operated by the New York city housing authority to this new entity so that they can undergo the necessary rehabilitation, repair and modernization, will ensure that these buildings continue to provide affordable housing to residents of New York city for many decades into the future. It is the understanding and intention of the legislature that any building transferred to this new public entity and operated by the New York city housing authority shall continue to be subject to the obligations imposed by Maribel Baez et al. v. New York City Housing Authority, No. 13-Civ-8916.

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

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

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

(a) the quality of the proposer's performance on previous projects;

(b) the timeliness of the proposer's performance on previous projects;

(c) the level of customer satisfaction with the proposer's performance on previous projects;

(d) the proposer's record of performing previous projects on budget and ability to minimize cost overruns;

(e) the proposer's ability to limit change orders;

(f) the proposer's ability to prepare appropriate project plans;

(g) the proposer's technical capacities;

(h) the individual qualifications of the proposer's key personnel;

(i) the proposer's ability to assess and manage risk and minimize risk impact;

(j) the proposer's financial capability;

(k) the proposer's ability to comply with applicable requirements, including the provisions of articles one hundred forty-five, one hundred forty-seven and one hundred forty-eight of the education law;

(l) the proposer's past record of compliance with federal laws, state and local laws, rules, licensing requirements, where applicable, and executive orders, including, but not limited to, section three of the housing and urban development act of nineteen hundred sixty-eight, as amended, or any successor provision, article fifteen-A of the executive law, any other applicable laws concerning minority- and women-owned business enterprise participation, the labor law, and any other applicable labor and prevailing wage laws;

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

(n) a quantitative factor to be used in evaluation of bids or offers for awarding of contracts for bidders or offerors that are certified as minority or women owned business enterprises pursuant to article fifteen-A of the executive law and certified pursuant to section thirteen hundred four of the New York city charter as minority or women owned business enterprises. Where the trust identifies a quantitative factor pursuant to this paragraph, the trust shall specify that businesses certified as minority or women owned business enterprises pursuant to article fifteen-A of the executive law as well as those certified as minority or women owned business enterprises pursuant to section thirteen hundred four of the New York city charter are eligible to qualify for such factor. Nothing in this paragraph shall be construed to require that such businesses be concurrently certified as minority or women owned business enterprises under such article and such section to qualify for such quantitative factor; and

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

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

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

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

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

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

(c) assumes the risk of construction costs exceeding an amount specified in the construction manager at risk agreement.

6. "Construction manager build" means a project delivery method whereby a construction manager:

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

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

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

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

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

9. "Ground lease" means the written instrument pursuant to which NYCHA transfers to the trust its leasehold interest in its housing facilities and ancillary personal property.

10. "Housing facilities" means the land and buildings thereon owned or operated by NYCHA and the improvements made to such land and buildings for use in connection with development or operation of dwelling accommodations for low-income families.

11. "Low-income families" means low-, very low-, and extremely low-income families as defined in paragraph two of subsection (b) of section 1437a of title forty-two of the United States code or any successor provision.

12. "Mayor" means the mayor of the city of New York.

13. "NYCHA" means the New York city housing authority.

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

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

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

17. "Other residents" means residents who are:

(a) residents of a housing facility on the date NYCHA transfers such facility to the trust but are not low-income families, as defined in this section, on the date of such transfer;

(b) low-income families, as defined in this section, and residents of a housing facility on the date NYCHA transfers such facility to the trust but who, subsequent to such transfer and during the course of the tenancies of such residents, no longer satisfy the definition of low-income families; or

(c) low-income families, as defined in this section, upon commencement of their tenancies in a housing facility operated by the trust but who, during the course of the tenancies of such residents, do not satisfy the definition of low-income families.

18. "Project labor agreement" shall have the same meaning as described in subdivision one of section two hundred twenty-two of the labor law. A project labor agreement shall require participation in apprentice training programs in accordance with paragraph (e) of subdivision two of section two hundred twenty-two of the labor law.

19. "Resident" means a natural person whose lawful primary residence is a dwelling unit in a housing facility.

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

§ 603. New York city public housing preservation trust. 1. There is hereby established a public benefit corporation to be known as the "New

York city public housing preservation trust". The purpose of such trust shall be the design, development, construction, reconstruction, improvement, modernization, rehabilitation, repairing and operation of housing facilities.

2. The trust shall be governed by and its powers shall be exercised by a board of trustees consisting of nine members. The members shall be the NYCHA CEO, the NYCHA CFO, the deputy mayor for housing and economic development of the city of New York, or another deputy mayor designated by the mayor if there is no deputy mayor with that designation, three members appointed by the NYCHA CEO, including two housing facility resident members and one member at large, provided that one such housing facility resident member shall be selected from two candidates nominated by the recognized citywide council of presidents, or an equivalent successor body, and one such housing facility resident member shall be selected from two candidates nominated by the resident advisory board, or an equivalent successor body, and three members appointed by the mayor, including two housing facility resident members and one member who shall represent employees of NYCHA, as applicable, and be selected from two candidates nominated by organizations representing employees of NYCHA or the trust, as applicable. The NYCHA CEO shall be the chair of the trust. The board of trustees of the trust shall appoint the president of the trust. The term of each member, other than members serving by virtue of their positions, shall be three years, except at initial appointment when the terms shall be staggered so that no more than two members shall have terms that end in any given year, provided that the term of only one member appointed by the mayor shall end in any given year.

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

4. Appointed members may engage in private employment, or in a profession or business, unless otherwise prohibited by law, rule or regulation, provided, however, that notwithstanding any applicable provision of law, the members shall be subject to the limitations contained in sections two thousand six hundred three, two thousand six hundred four, two thousand six hundred five, and two thousand six hundred six of the New York city charter. The trust shall be an agency and such members shall be public servants for the purposes of such sections. In addition, such members shall be subject to the provisions of section one thousand one hundred sixteen of the New York city charter and shall for the purposes of such section be considered officers of the city. Further, such members, the president and certain critical employees of the trust as designated by the board or the president, shall be subject to the provisions of section 12-110 of the administrative code of the city of New York pertaining to the filing of annual disclosure reports with the city conflicts of interest board, and for such purpose, the members of the board of trustees shall be deemed to be compensated members of the trust.

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

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

7. The board shall appoint a president of the trust and determine the compensation of the president. The president, who shall not be a member of the board, shall be the chief executive officer of the trust and shall be responsible for the discharge of the executive and administrative functions and powers of the trust, including the power to appoint and remove all other officers and employees of the trust, to fix the compensation for employees subject to applicable civil service and collective bargaining requirements, and to exercise powers of the board that may be delegated by the board to the president. The president may further delegate powers conferred by this article, including powers delegated to the president by the board, to officers and employees of the trust. The president shall serve at the pleasure of the board. The president may designate one or more deputies and determine their relative ranks and duties. When the position of president is vacant, or whenever by reason of illness or for any other reason the president shall be prevented from attending to the duties of such position, the highest-ranking deputy not absent or under disability shall act as president.

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

9. Notwithstanding any provision of law to the contrary, no officer or employee of the state, or of any civil division thereof, or of any public corporation, as defined in the general construction law, including NYCHA, shall be deemed to have forfeited or shall forfeit such person's office or employment or any benefits provided under the retirement and social security law or under any public retirement system maintained by the state or by the civil divisions thereof, or by any such public corporation, by reason of such person's acceptance of membership on the board of the trust or by virtue of such person being an officer or employee of the trust.

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

1. to sue and be sued;

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

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

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

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

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

7. to encumber residential property and buildings held by the trust and limit use to residents who are low-income families as defined in subdivision eleven of section six hundred two of this article and other residents as defined in subdivision seventeen of section six hundred two of this article;

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

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

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

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

12. to borrow and loan funds and issue bonds, notes or other obligations consistent with this article;

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

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

15. to apply for or accept from any source any gifts, grants, donations, or conveyances of land, money, other real or personal property, or other items of value, or loans of funds or property or financial or other aid or credit assistance in any form, including any guaranty, line of credit, or grant, from the federal government or any agency or instrumentality thereof, from the state or any agency or instrumentality thereof, from the city or any agency or instrumentality thereof, or from any other source, for any or all of the purposes specified in this article, and it may comply, subject to the provisions of this article, with the terms and conditions thereof;

16. prior to the approval of any rule or regulation affecting rights and protections afforded to residents of housing facilities, including, but not limited to, resident protections and opportunities pursuant to section six hundred seven of this article, lease revisions, schedules of special charges for services, repairs and utilities, and rules and regulations to be incorporated into the lease by reference, the trust shall post a notice containing the proposed rule or regulation on the website of the trust and in a prominent location in the affected housing facility. Such notice shall include (a) a statement of the basis and purpose

of the proposed rule, (b) the time and place of the meeting at which the board will provide residents an opportunity to provide oral comment on such proposed rule, provided that a meeting to provide residents an opportunity to provide oral comment shall not be required if such rule is required by law with only minor, if any, exercise of discretion by the trust, or does not adversely affect the protections afforded to the residents of the housing facilities, and (c) an opportunity to submit written comments and the final date for receipt of written comments. The trust may adopt a rule or regulation after receiving written comments on the proposed rule or regulation for a period of at least thirty days. The trust shall consider all comments received in such period prior to adopting such rule or regulation. In the event the trust determines that immediate adoption of any rule or regulation is necessary for the preservation of health, safety or general welfare and that compliance with the foregoing requirements of this subdivision would be contrary to the public interest, such proposed item may be adopted on an emergency basis. The trust shall provide written justification for such determination and make such justification publicly available including via its website and in a prominent location in the affected housing facility. Any such immediate adoption shall only remain in effect for sixty days, and during such time the trust shall comply with the requirements of this subdivision in order for the adoption of the rule or regulation to become permanent; and

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

§ 605. Transfer of property. 1. NYCHA, acting by NYCHA board resolution and in accordance with a disposition or similar plan approved by the United States department of housing and urban development, which shall include a letter of approval from the mayor or a designee of the mayor, may transfer to the trust, with or without consideration and without any further authorization, a leasehold interest in its housing facilities and any ancillary personal property of such facilities. The aggregate number of residential units transferred to the trust pursuant to this section shall not exceed twenty-five thousand. On an annual basis, the trust shall review such limit and, if it determines that such limit should be increased, make recommendations to the legislature regarding any such increase.

2. The trust shall not transfer, convey, assign, mortgage, pledge or otherwise encumber any interest in, or permit or suffer any transfer, conveyance, assignment, mortgage, pledge or other encumbrance of any interest in any housing facilities, or any part thereof without prior written consent of NYCHA.

3. The trust shall ensure that any housing facilities transferred to the trust pursuant to this section and any portions thereof are leased in accordance with United States department of housing and urban development eligibility and income-targeting requirements, to the extent applicable to the units therein. Rents for such units shall not exceed applicable program requirements for the provision of housing for low-income families as established pursuant to federal law and regulations.

4. Prior to the transfer of any housing facility, or any part thereof, NYCHA and the trust shall each post a notice of such proposed transfer on the respective website of NYCHA and the trust and in a prominent location of the affected housing facility. Such notice shall include:

(a) a summary description of the proposed transfer;

(b) the time and place of two public meetings at which NYCHA shall provide residents of such facility an opportunity to provide oral comment on the proposed transfer; and

(c) an opportunity for residents to submit written comments and the final date for submission of such comments. NYCHA and the trust shall consider all comments received in such period prior to completing a transfer pursuant to this subdivision.

§ 606. Exemption from land use review procedures and other requirements. 1. Except for the provisions of article eight of the environmental conservation law and article fourteen of the parks, recreation and historic preservation law, neither (a) the establishment or amendment of a housing facility's disposition or similar plan pursuant to agreement with the United States department of housing and urban development and actions relating to the financing thereof, (b) the selection of sites for projects, (c) any conveyance or other grant of property or of any interest therein by NYCHA or any other person, firm or organization to the trust, (d) the development of housing facilities by or through the trust, including any contracts, approvals, consents, agreements, permits or authorizations necessary to accomplish the same, and (e) the reconveyance or transfer of property to NYCHA by the trust, shall be subject to the provisions of any general, special or local law, city charter, administrative code, ordinance or resolution governing uniform land use review procedures, any other land use planning review and approvals, historic preservation procedures, architectural reviews, franchise approvals and other state or local review and approval procedures governing the use of land and the improvements thereon within the city. Capital projects for housing facilities to be undertaken by or through the trust shall not be subject to the provisions of the New York city charter relating to site selection, land use review procedures, art commission review procedures, general standards and cost limits, project scope and design procedures, or contract registration and vouchering procedures.

2. The trust shall be subject to zoning regulations to the same extent that NYCHA is subject to such regulations.

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

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

(b) ensuring that any resident required to relocate temporarily for purposes of rehabilitation or redevelopment of such housing facility is able to return to such housing facility following the completion of such rehabilitation or redevelopment, and that the relocation expenses of such temporary relocation be paid for by the trust or NYCHA as required by applicable federal law;

(c) providing a resident of such housing facility the opportunity to establish and operate a council to represent residents in such housing facility to address concerns relating to such facility and to be eligible for resident participation funding from the trust consistent with funding available to residents of public housing pursuant to section 964.150 of title twenty-four of the code of federal regulations or any successor regulation, provided that any resident council that, at the

time of the transfer of a housing facility to the trust, is certified by NYCHA as the resident council shall be recognized by the trust as the resident council of such housing facility;

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

(e) providing a resident of a housing facility automatic renewal of such resident's leases, except for good cause as specified in the lease between such resident and the trust, consistent with the requirements relating to a lease between a public housing agency and a tenant of a dwelling unit pursuant to subparagraph (i) of paragraph two of subdivision (a) and subdivision (l) of section 966.4 of title twenty-four of the code of federal regulations or any successor regulation;

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

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

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

2. The resident protections described in subdivision one of this section shall be enumerated in the ground lease or other appropriate agreement between NYCHA and the trust and shall be further enumerated in writing between the trust and each resident of a housing facility. Nothing in this section shall preclude the trust or NYCHA from providing additional resident protections, which may be enumerated in any such ground lease or agreement.

3. The trust, to the greatest extent feasible, and consistent with federal, state and local laws and regulations, shall ensure that employment and other economic opportunities be directed to residents of the housing facilities, consistent with section three of the housing and urban development act of nineteen hundred sixty-eight, as amended, and part seventy-five of title twenty-four of the code of federal regulations or any successor law or regulation.

4. The trust shall act in accordance with the full requirements of part nine hundred sixty-four of title twenty-four of the code of federal regulations or any successor regulation. The trust shall, among other requirements, support resident participation in the operations of the housing facilities and negotiate, with any resident management corporations, or equivalent that satisfies the requirements of such part, for operation of a housing facility.

§ 608. Compliance with codes. 1. The trust shall, in the design, development, construction, reconstruction, improvement, modernization, rehabilitation, repair, and operation of or otherwise providing for

housing facilities, comply and cause all contractors of the trust to comply with applicable sanitary and building laws and regulations.

2. The trust shall adopt rules or regulations establishing sustainable design guidelines for the development, construction, reconstruction, improvement, modernization, rehabilitation, repair, and operation of, or otherwise providing for, housing facilities, which shall include criteria for beneficial electrification and renewable energy production in furtherance of the goals of decarbonized buildings, use of sustainable materials, and energy and water efficiency.

§ 609. Contracts of the trust. 1. Notwithstanding any provision of law to the contrary, the trust shall establish and maintain procurement policies that shall set forth the methods and procedures by which the trust shall procure contracts for goods and services, including but not limited to services for design, development, construction, reconstruction, improvement, modernization, rehabilitation, repair and operation, related to property owned or leased by the trust, in a manner consistent with the provisions of this article. Such policies shall specifically include:

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

(b) processes for awarding contracts for goods and services using alternatives to competitive sealed bidding where competitive sealed bidding is not practicable or not advantageous, in which case the trust shall use the most competitive method of procurement that is appropriate under the circumstances to select the proposer offering the best value to the trust;

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

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

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

(f) procedures for the fair and equitable resolution of contract disputes, for appeals of responsiveness and responsibility determinations by the trust, and for appeals of prequalification determinations;

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

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

(1) the existence of an emergency involving danger to life, safety or property requires immediate action and cannot await a competitive process for goods or services to be purchased, including, but not limited to, services for construction, reconstruction, rehabilitation, alteration, renovation, maintenance or repairs, which are essential to effi-

cient operation or the adequate provision of service by the trust and as a consequence of unforeseen circumstance such purchase cannot await a competitive process;

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

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

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

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

(6) the contract is a contract between the trust and another governmental entity, including, but not limited to NYCHA.

2. Contracts of the trust shall be subject to sections 6-108 and 6-123 of the administrative code of the city of New York, and the trust shall constitute a "contracting agency" for the purposes of section 6-123 of the administrative code of the city of New York.

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

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

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

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

(1) The first step shall be the generation of a list of responding entities that have demonstrated the general capability to perform the alternative project delivery contract. Such list shall consist of a specified number of responding entities, as determined by the trust, and shall be generated based upon the trust's review of responses to a publicly advertised request for qualifications. The trust's request for qualifications shall include a general description of the public work, the maximum number of responding entities to be included on such list, the selection criteria to be used and the relative weight of each criteria in generating such list. Such selection criteria shall include the qualifications and experience of the entity or team of entities, organization, demonstrated responsibility, ability of the entity or team of entities or of a member or members of the entity or team of entities to comply with applicable requirements, including the provisions of articles one hundred forty-five, one hundred forty-seven and one hundred

forty-eight of the education law, past record of compliance with the labor law, and such other qualifications the trust deems appropriate, which may include but are not limited to project understanding, financial capability and record of past performance. The trust shall evaluate and rate all responding entities to the request for qualifications. Based upon such ratings, the trust shall list the responding entities that shall receive a request for proposals in accordance with subparagraph two of this paragraph. To the extent consistent with applicable federal law, the trust shall consider, when awarding any contract pursuant to this section, the participation of (i) responding entities that are certified as minority or women owned business enterprises pursuant to article fifteen-A of the executive law, or certified pursuant to local law as minority or women owned business enterprises, (ii) small business concerns identified pursuant to subdivision (b) of section one hundred thirty-nine-g of the state finance law, and (iii) business concerns that provide economic opportunities for low and very low-income persons. In addition, nothing in this section shall be deemed to supersede any prequalification policies adopted by the trust pursuant to section six hundred nine of this article.

(2) The second step shall be the selection of the proposal which is the best value to the trust. The trust shall issue a request for proposals to the responding entities listed pursuant to subparagraph one of this paragraph. If such a responding entity consists of a team of separate entities, the entities that comprise such a team shall remain unchanged from the responding entity as listed pursuant to subparagraph one of this paragraph unless otherwise approved by the trust. The request for proposals shall set forth the public work's scope of work, and other requirements, as determined by the trust, which may include separate goals for work under the contract to be performed by businesses certified as minority or women owned business enterprises pursuant to article fifteen-A of the executive law, or certified pursuant to local law as minority or women owned business enterprises, or goals established pursuant to section three of the housing and urban development act of nineteen hundred sixty-eight, as amended, or any successor provision, if applicable. The request for proposals shall also specify the criteria to be used to evaluate the responses and the relative weight of each of such criteria. Such criteria shall include: the quality of the proposal's solution; the qualifications and experience of the proposer; the proposal's cost, which may include factors that may be considered individually or in the aggregate, such as the proposed cost of design phase work, the proposed cost of construction phase work, or cost factors relating to construction phase work, as applicable; and other factors deemed pertinent by the trust, which may include, but shall not be limited to, the proposal's manner and schedule of project implementation, the proposer's ability to complete the work in a timely and satisfactory manner, maintenance costs of the completed public work, maintenance of traffic approach, and community impact. The trust may engage in negotiations or other discussions with all qualified vendors that have expressed interest, provided that the trust maintains a written record of the conduct of negotiations or discussions and the basis for every determination to continue or suspend negotiations, and further provided that if the trust determines for a particular contract or for a particular type of contract that it is in the trust's best interest to negotiate or enter into discussions with fewer proposers, it may make such a determination in writing. If the trust enters into such negotiations, the trust shall allow all proposers to revise their proposals

upon conclusion of negotiations, and the trust shall evaluate the proposers' revised proposals using the criteria included in the request for proposals. Any contract awarded pursuant to this section shall be awarded to a responsive and responsible proposer, which, in consideration of these and other specified criteria deemed pertinent, offers the best value as determined by the trust. The request for proposals shall include a statement that proposers shall designate in writing those portions of the proposal that contain trade secrets or other proprietary information that are to remain confidential, so that the material designated as confidential shall be readily separable from the proposal. Nothing in this subdivision shall be construed to prohibit the trust from negotiating final contract terms and conditions including cost. All proposals submitted shall be scored according to the criteria listed in the request for proposals and such final scores shall be published on the trust's website after the date upon which such contract may be implemented.

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

(1) a cost-plus not to exceed guaranteed maximum price form of contract in which the trust shall be entitled to monitor and audit all costs. In establishing the schedule and process for determining a guaranteed maximum price, the contract between the trust and the contractor shall include terms specifying the price for the design phase of the work, the scope of the work, and any applicable cost factors relating to construction phase work that were included in the contractor's proposal. A fair and reasonable guaranteed maximum price for the construction phase of the work, or portions of the construction phase of the work, may be agreed to as one or more amendments to such contract based on developments in the design of the project that occur after such contract is executed. Each guaranteed maximum price amendment shall: (i) describe the scope of the portion of the construction phase work subject to the amendment, the cost of performing such work, and the maximum costs of any contingencies related to such work, (ii) include a detailed line item cost breakdown, (iii) include a list of all drawings, specifications and other information on which the guaranteed maximum price is based, (iv) include the dates of substantial and final completion on which the guaranteed maximum price is based, as applicable, and (v) include a schedule of unit prices. The trust shall maintain a written record of each guaranteed maximum price amendment, which shall include a summary of the negotiation process and a description of the relevant developments in the design of the project, independent cost estimates prepared by or on behalf of the trust, as required pursuant to a policy established by the trust, the contractor's actual cost schedules and unit prices, and any other factors that the trust considered. If the trust and the contractor cannot agree upon a guaranteed maximum price for one or more portions of construction phase work, the trust may direct the contractor to assign all duties and rights under such alternative project delivery contract to another responsive and responsible proposer pursuant to subparagraph two of paragraph (a) of this subdivision that offered the best value of the remaining proposers and that will agree to accept such assignment. This subparagraph shall not be deemed to prohibit the use of any contract terms or procedures pursuant to any other provision of law, including but not limited to provisions included in this article;

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 613. Borrowing by the trust and for its benefit; effects of certain defaults. 1. For the purposes of this section, the term "project" means the development, design, construction, reconstruction, improvement, rehabilitation, repairing and operation of housing facilities.

2. The trust shall have the power and is hereby authorized from time to time to issue bonds, notes or other obligations 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 project and to fund reserves to secure such bonds, notes or other obligations, including incidental expenses in connection therewith. The trust shall have the power from time to time to refund any bonds, notes or other obligations of the trust by the issuance of new bonds, notes or other obligations, and may issue bonds, notes or other obligations partly to refund bonds, notes or other obligations of the trust then outstanding and partly to pay the cost of any project. Bonds, notes or other obligations issued by the trust shall be payable as may be designated in the resolution of the trust under which the bonds, notes or other obligations shall be authorized to be issued, subject to any agreements with the holders of outstanding bonds, notes or other obligations pledging any particular revenues or moneys. No bonds, notes or other obligations of the trust or any entity referred to in subdivision thirteen of section six hundred four of this article shall be issued or incurred without the prior written approval of the director of management and budget of the city of New York.

3. The trust shall be authorized to obtain insurance, letters of credit and other credit or liquidity facilities related to its bonds, notes or other obligations.

4. The board may delegate to the chair or the president of the trust the power to set the final terms of bonds, notes or other obligations.

5. Whenever the trust shall determine that the issuance of its bonds, notes or other obligations is appropriate, the trust shall make a determination as to the arrangements necessary for the issuance and sale of such bonds, notes or other obligations, including the underwriting of such bonds, notes or other obligations through the public or private sale of such bonds, notes or other obligations, and such determination shall include compensation for services rendered as the trust deems appropriate. Such determination shall be set forth in a resolution of the trust, which shall authorize issuance of such bonds, notes or other obligations. The bonds, notes or other obligations shall bear interest at such fixed or variable rates and shall be in such denominations, be in such form, either coupon or registered, be sold at such public or private sale, be executed in such manner, be denominated in United States currency, be payable in such medium of payment, at such place and be subject to such terms of redemption as the trust may provide in such resolution.

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

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

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

(c) limitations on the purpose to which the proceeds from the sale of bonds, notes or other obligations may be applied;

(d) limitations on the issuance of additional bonds, notes or other obligations, the terms upon which additional bonds, notes or other obligations may be issued and secured and the refunding of bonds, notes or other obligations;

(e) the procedure, if any, by which the terms of any contract with holders of bonds, notes or other obligations may be amended or abrogated, including the proportion of holders of bonds, notes or other obligations which are needed to consent thereto and the manner in which such consent may be given;

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

(g) defining the acts or omissions to act that may constitute a default in the obligations and duties of the trust to the holders of bonds, notes or other obligations and providing for the rights and remedies of the holders of bonds, notes or other obligations 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 article.

7. In addition to the powers herein conferred upon the trust to secure its bonds, notes or other obligations, the trust shall have power in connection with the issuance of bonds, notes or other obligations to enter into such agreements for the benefit of the holders of bonds,

notes or other obligations as the trust may deem necessary, convenient or desirable concerning the use or disposition of its revenues or other moneys, including the entrusting, pledging or creation of any other security interest in any such revenues, moneys and the doing of any act, including refraining from doing any act, which the trust would have the right to do in the absence of such agreements. The trust shall have power to enter into amendments of any such agreements within the powers granted to the trust by this article and to perform such agreements. The provisions of any such agreements may be made a part of the contract with the holders of bonds, notes or other obligations of the trust.

8. Notwithstanding any provision of the uniform commercial code to the contrary, any pledge of or other security interest in revenues, moneys, accounts, contract rights, general intangible or other personal property made or created by the trust 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 trust irrespective of whether or not such parties have notice thereof. No instrument by which such a pledge or security interest is created nor any financing statement need be recorded or filed.

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

10. Neither the members of the board 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. The bonds, notes or other obligations of the trust shall not be a debt of NYCHA, the city, or the state, and neither NYCHA, the city nor the state shall be liable thereon, nor shall they be payable out of any funds other than those of the trust, and such bonds, notes or other obligations shall contain on the face thereof a statement to such effect.

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

12. Notwithstanding any provision of article twelve of the private housing finance law, section twenty-nine hundred seventy-six of the public authorities law or any other general, special or local law to the contrary, (a) the purposes of the New York city housing development corporation and its powers granted in article twelve of the private housing finance law also shall include, subject to the provisions of any contract with holders of its bonds, notes or other obligations, the making of loans to the trust and entities referred to in subdivision thirteen of section six hundred four of this article, and (b) bonds, notes or other obligations of the New York city housing development corporation issued for, or to refund bonds, notes or other obligations issued for, such purpose or the purposes of paying costs of issuance thereof or funding reserves to secure such bonds, notes or other obligations (i) may be sold without any consultation or approval otherwise required by subdivision two of section six hundred fifty-five of the private housing finance law, (ii) shall not be included in any calcu-

lation of outstanding bonds, notes or other obligations for purposes of section six hundred fifty-six of the private housing finance law and shall not be secured by any capital reserve fund established pursuant thereto, and (iii) shall not be included in any calculation of bonds, notes or other obligations issued by the New York city housing development corporation for purposes of section twenty-nine hundred seventy-six of the public authorities law.

13. In the event that any default on any bond, note or other obligation that is secured by an assignment of, mortgage on, pledge of or other encumbrance on any interest of the trust, or any entity referred to in subdivision thirteen of section six hundred four of this article, in any housing facilities, has occurred and is continuing beyond the applicable cure period, if any, provided to the trust or such entity in the instrument granting such assignment, mortgage, pledge or other encumbrance, notwithstanding any provision in such instrument, any right of the beneficiary of such instrument to obtain such interest in such housing facilities as a remedy to any such default shall, for a period ending thirty days after the end of such cure period, be subject to:

(a) the right of the city of New York to remedy, or cause to be remedied, such default; and

(b) the right of the state of New York to remedy, or cause to be remedied, such default; provided, however, that nothing in this subdivision shall be construed to impose any obligation on the city of New York or on the state of New York to remedy, or cause to be remedied, such default.

14. Notwithstanding any default on any obligation referred to in subdivision thirteen of this section, and any remedies exercised as a result of such default, provisions relating to the restricted use of the housing facilities for the provision and operation of housing for low-income families and current residents shall at all times continue to be in effect, and the housing facilities shall remain subject to the provisions of subdivision three of section six hundred five of this article.

15. At least quarterly, the trust shall provide financial reports to the director of management and budget of the city of New York containing such information as the director of management and budget of the city of New York may request.

§ 614. Resources of the trust. 1. Subject to the provisions of this article, the members of the board shall receive, accept, invest, administer, expend and disburse for its corporate purposes all money of the trust from whatever sources derived including (a) the proceeds of bonds, notes and other obligations, and (b) any other payments, gifts, or appropriations to the trust from any other source.

2. Subject to the provisions of any contract with holders of bonds, notes or other obligations, the money of the trust shall be paid to the trust and shall not be commingled with any other money. The money of the trust shall be deposited in accounts held in the trust's name in the bank or banks in the state designated by the trust.

3. The moneys in such accounts shall be paid out on checks of the trust upon requisition by the chair or such officer or officers as the trust may authorize to make such requisitions, or pursuant to a bond resolution or trust indenture.

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

not be invested in instruments commonly known as repurchase agreements. The trust shall have the power, notwithstanding the provisions of this section, to contract with the holders of any of its bonds, notes and other obligations as to the custody, collection, securing, investment and payment of any money of the trust or any money held in trust or otherwise for the payment of bonds, notes and other obligations or in any way to secure bonds, notes and other obligations, and to carry out any such contract notwithstanding that such contract may be inconsistent with the other provisions of this article.

§ 615. Legal investment and deposit. The bonds, notes or other obligations of the trust are hereby made securities in which all public officers and bodies of the state and all public corporations, municipalities and municipal subdivisions, 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, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, conservators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or in other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. The bonds, notes or other obligations 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 and public corporations for any purpose for which the deposit of bonds, notes or other obligations of the state is now or may hereafter be authorized.

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

2. Any bonds, notes or other obligations issued pursuant to this article together with the income therefrom shall at all times be exempt from taxation.

3. The state hereby covenants with the purchasers and with all subsequent holders and transferees of bonds, notes or other obligations issued by the trust pursuant to this article, in consideration of the acceptance of and payment for the bonds, notes or other obligations, that the bonds, notes or other obligations of the trust issued pursuant to this article and the income therefrom and all revenues, monies, and other property pledged to pay or to secure the payment of such bonds, notes or other obligations shall at all times be free from taxation.

§ 617. Actions against the trust. 1. Except in an action for wrongful death, no action or proceeding shall be prosecuted or maintained against the trust 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 trust or of any member of the board, officer, agent or employee thereof, unless (a) it shall appear by and as an allegation in the complaint or moving papers that a notice of claim shall have been made and served upon the trust, within the time limit prescribed 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, and (c) the action or proceeding shall be commenced within one year after the happening of the event upon which the claim is based. An action against the trust for wrongful death shall be commenced in accordance with the notice of claim and time limitation provisions of title eleven of article nine of the public authorities law.

2. Wherever a notice of claim is served upon the trust, 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 trust may require any person presenting for settlement an account or claim for any cause whatsoever against the trust to be sworn before a member of the board, 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 trust shall have power to settle or adjust any claims in favor of or against the trust.

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

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

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

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

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

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

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

2. In the event that the trust elects to have the New York city collective bargaining law apply to the trust, for the purpose of article fourteen of the civil service law and the New York city collective bargaining law, as applicable, the trust, acting by and through its president, shall be deemed to be the public employer and as such shall negotiate with and enter into written agreements with employee organizations representing the staff of the trust that have been certified or recognized under such article. In carrying on such negotiations, the president of the trust may consult with and seek assistance from the city office of labor relations and NYCHA. The president of the trust shall consult with the appropriate public employee organization on the establishment of, and bargain all terms and conditions of, any new titles established for the trust which have a community of interest with titles already represented by the public employee organization which presently has representation rights for those titles for NYCHA or for the city. Any such titles for which terms and conditions are bargained pursuant to this subdivision shall be deemed to be successor titles within the meaning of applicable law and, so long as the responsibilities of employees in these titles are reasonably related to the responsibilities of employees currently represented by a public employee organization, shall be accreted to the appropriate bargaining certificates for which such public employee organization shall be voluntarily recognized as the bargaining agent under procedures acceptable to the office of collective bargaining or the state public employment relations board, as applicable.

§ 620. Application of state and local human rights laws. Notwithstanding any provision of law to the contrary, article fifteen of the executive law and title eight of the administrative code of the city of New York shall apply to the trust.

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

2. Neither the members of the board nor any officers or employee of the trust acting on behalf thereof, while acting within the scope of

such person's authority, shall be subject to any liability resulting from carrying out any of the powers expressly given in this article.

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

4. The trust shall indemnify and hold harmless its employees in the amount of any civil judgment obtained against such employees in any state or federal court, or in the amount of any settlement of a claim approved by the trust provided that the act or omission from which such judgment or settlement arose occurred while the employee was acting within the scope of his or her public employment and in the discharge of his or her public duties and was not in violation of any rule or regulation of the trust at the time the alleged damages were sustained. The duty to indemnify and hold harmless prescribed by this section shall not arise where the injury or damage resulted from an intentional wrongdoing, or recklessness on the part of the employee. Nothing in this section shall authorize the trust to indemnify or hold harmless an employee with respect to punitive or exemplary damages, fines or penalties.

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

6. In the event that the act or omission upon which the court proceeding against the employee is based was or is also the basis of a disciplinary proceeding by the trust against the employee, representation and indemnification by the trust, as set forth in this section, may be withheld (a) until such disciplinary proceeding has been resolved, and (b) unless the resolution of the disciplinary proceeding exonerated the employee as to such act or omission.

7. Subject to the conditions set forth in this section, such employee shall be entitled to representation by the general counsel of the trust or by any attorney or attorneys designated by the general counsel, provided, however, that the employee shall be entitled to be represented by private counsel of his or her choice in any civil action or proceeding whenever the trust determines that representation would be inappro-

priate, or whenever a court, upon appropriate motion or otherwise by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by private counsel of the employee's choice. The general counsel of the trust shall notify the employee in writing of such determination that the employee is entitled to be represented by private counsel. Provided, however, that the trust may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the trust to such private counsel from time to time during the pendency of a civil action or proceeding.

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

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

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

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

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

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

§ 622. Audit and annual reports. The trust shall annually prepare and submit reports as required by this section, provided that no report shall be required during the first year after the effective date of this section.

1. Within one one hundred twenty days of the end of the city's fiscal year, the trust shall submit to the mayor of the city, the recognized citywide council of presidents, or an equivalent successor body, and the NYCHA board a report on its operations during such fiscal year. An annual audit of the trust shall be conducted by an independent certified public accountant, and the trust's independently audited financial statements shall be included in this report. The report shall also detail the extent of completion of all projects for development, design, construction, reconstruction, improvement, rehabilitation, repairing and operation of housing facilities, including, by project, identified shortfalls in schedule performance and providing explanation for such shortfalls. Such report shall detail the extent of completion as existed on the last day of the city's fiscal year. Such report shall also include a description of each alternative project delivery contract, information regarding the procurement process for each such alternative project delivery contract including the list of responding entities that

demonstrated the general capability to perform such alternative project delivery contract pursuant to paragraph (a) of subdivision one of section six hundred ten of this article, the total cost of each alternative project delivery contract, an explanation of the estimated savings attributable from the alternative project delivery contract structure used, and the participation rate of and total dollar value of monies paid to minority and women owned business enterprises under such contract. Such report shall also include a description of the employment and other economic opportunities directed to residents of the housing facilities pursuant to subdivision three of section six hundred seven of this article. The trust shall transmit the portion of such report relating to alternative project delivery contracts to the governor, the temporary president of the senate and the speaker of the assembly.

2. On the last business day in November of each calendar year, the trust shall submit a report describing its strategic planning framework for the upcoming calendar year to the mayor of the city and to the NYCHA board. Such report shall describe any capital improvements to be undertaken and the approximate costs of such improvements and shall provide information regarding operations, programs, and services of the trust. The trust shall present a draft of this report at a meeting of the board scheduled to occur no less than forty-five calendar days prior to the last business day in November. The trust shall make such draft available for public review no less than fifteen calendar days before such meeting. The trust shall offer the public an opportunity to provide oral comment on the report at such meeting and to submit written comments to the trust until a specified date prior to the date on which the report is finalized. The trust shall consider all comments received during such period prior to finalizing the report required by this subdivision.

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

2. The department of investigation of the city shall be authorized to conduct investigations relating to the trust pursuant to chapter thirty-four of the New York city charter.

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

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

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

§ 625. Severability. If any provision of this article or its application to any person or circumstance is held unconstitutional or invalid, in whole or in part, by any court, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this article or the application of any such provision to any other

person or circumstance, and to this end the provisions of this article are severable.

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

b. Service as a paid employee of the triborough bridge authority, the Henry Hudson parkway authority, the Marine parkway authority, the New York city tunnel authority, the New York city parkway authority, the New York city housing authority, **the New York city public housing preservation trust,** the triborough bridge and tunnel authority, the New York city transit authority, the New York city housing development corporation, the New York city health and hospitals corporation, the New York city off-track betting corporation, the New York city school construction authority, the New York city municipal water finance authority, the New York city water board, the transit construction fund, the New York city transitional finance authority, the New York city sports authority and the New York city rehabilitation mortgage insurance corporation shall constitute city-service as herein defined.

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

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

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

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

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

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

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

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

(H) Where a responsible obligor (as defined in paragraph ten of subdivision a of section 13-638.2 of this title) is required to make payments to the retirement system pursuant to applicable provisions of law in fiscal year two thousand twelve--two thousand thirteen, and in any fiscal year thereafter, and the provisions of this subdivision or the provisions of any other applicable law do not otherwise specifically require such responsible obligor to make such payments by a particular date or dates during such fiscal year, such responsible obligor shall make such payments either (i) in total on or before January first of such fiscal year, or (ii) in twelve equal monthly installments, as

determined by the actuary, with each monthly installment to be paid on or before the last day of each month.

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