

STATE OF NEW YORK

6999

2021-2022 Regular Sessions

IN SENATE

May 21, 2021

Introduced by Sens. KAVANAGH, BIAGGI, GOUNARDES, JACKSON, KRUEGER, LIU, PARKER, RIVERA, SALAZAR, SANDERS, SAVINO, SEPULVEDA, STAVISKY -- (at request of the NYC Housing Authority) -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

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

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

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

3 ARTICLE XIV

4 NEW YORK CITY PUBLIC HOUSING PRESERVATION TRUST

5 Section 600. Short title.

6 601. Legislative findings.

7 602. Definitions.

8 603. New York city public housing preservation trust.

9 604. Powers and duties of the trust.

10 605. Transfer of property.

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

13 607. Resident protections and opportunities.

14 608. Compliance with codes.

15 609. Contracts of the trust.

16 610. Alternative project delivery contracts.

17 611. Additional authority.

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

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

21 614. Resources of the trust.

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

LBD11275-02-1

1 615. Bonds legal for investment and deposit.

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

3 617. Actions against the trust.

4 618. Civil service and pension system membership.

5 619. Collective negotiation.

6 620. Application of state and local human rights laws.

7 621. Limited liability.

8 622. Audit and annual reports.

9 623. Jurisdiction over trust.

10 624. Effect of inconsistent provisions.

11 625. Severability.

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

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

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

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

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

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

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

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

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

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

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

47 (g) the proposer's technical capacities;

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

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

51 (j) the proposer's financial capability;

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

55 (l) the proposer's past record of compliance with federal laws, state
56 and local laws, rules, licensing requirements, where applicable, and

1 executive orders, including, but not limited to, section three of the
2 housing and urban development act of nineteen hundred sixty-eight, as
3 amended, or any successor provision, article fifteen-A of the executive
4 law, any other applicable laws concerning minority- and women-owned
5 business enterprise participation, the labor law, and any other applica-
6 ble labor and prevailing wage laws;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 9. "Housing facilities" means the land and buildings thereon owned or
2 operated by NYCHA and the improvements made to such land and buildings
3 for use in connection with development or operation of dwelling accommo-
4 datations for persons of low-income.

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

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

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

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

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

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

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

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

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

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

52 4. Appointed members may engage in private employment, or in a profes-
53 sion or business, unless otherwise prohibited by law, rule or regu-
54 lation, provided, however, that notwithstanding any applicable provision
55 of law, the members shall be subject to the limitations contained in
56 sections two thousand six hundred three, two thousand six hundred four,

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

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

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

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

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

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

1 public corporation, by reason of such person's acceptance of membership
2 on the board of the trust or by virtue of such person being an officer
3 or employee of the trust.

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

6 1. to sue and be sued;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 § 606. Exemption from land use review procedures and other require-
55 ments. 1. Except for the provisions of article eight of the environ-
56 mental conservation law and article fourteen of the parks, recreation

1 and historic preservation law, neither (a) the establishment or amend-
2 ment of a housing facility's disposition or similar plan pursuant to
3 agreement with the United States department of housing and urban devel-
4 opment and actions relating to the financing thereof, (b) the selection
5 of sites for projects, (c) any conveyance or other grant of property or
6 of any interest therein by the NYCHA or any other person, firm or organ-
7 ization to the trust, (d) the development of housing facilities by or
8 through the trust, including any contracts, approvals, consents, agree-
9 ments, permits or authorizations necessary to accomplish the same, and
10 (e) the reconveyance or transfer of property to the NYCHA by the trust,
11 shall be subject to the provisions of any general, special or local law,
12 city charter, administrative code, ordinance or resolution governing
13 uniform land use review procedures, any other land use planning review
14 and approvals, historic preservation procedures, architectural reviews,
15 franchise approvals and other state or local review and approval proce-
16 dures governing the use of land and the improvements thereon within the
17 city. Capital projects for housing facilities to be undertaken by or
18 through the trust shall not be subject to the provisions of the New York
19 city charter relating to site selection, land use review procedures, art
20 commission review procedures, general standards and cost limits, project
21 scope and design procedures, or contract registration and vouchering
22 procedures.

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

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

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

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

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

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

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

1 relating to a lease between a public housing agency and a tenant of a
2 dwelling unit pursuant to subparagraph (i) of paragraph two of subdivi-
3 sion (a) and subdivision (1) of section 966.4 of title twenty-four of
4 the code of federal regulations or any successor regulation;

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

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

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

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

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

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

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

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

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

55 (b) processes for awarding contracts for goods and services using
56 alternatives to competitive sealed bidding where competitive sealed

1 bidding is not practicable or not advantageous, in which case the trust
2 shall use the most competitive method of procurement that is appropriate
3 under the circumstances to select the proposer offering the best value
4 to the trust;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 and final completion on which the guaranteed maximum price is based, and
2 (v) include a schedule of unit prices;

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

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

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

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

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

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

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

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

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

53 (d) Without limiting contractors' obligations under alternative
54 project delivery contracts to issue their own initial certifications of
55 substantial completion and final completion, public employees of the
56 trust shall review and determine whether the work performed by contrac-

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

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

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

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

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

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

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

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

1 such bonds. The bonds shall bear interest at such fixed or variable
2 rates and shall be in such denominations, be in such form, either coupon
3 or registered, be sold at such public or private sale, be executed in
4 such manner, be denominated in United States currency, be payable in
5 such medium of payment, at such place and be subject to such terms of
6 redemption as the trust may provide in such resolution.

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

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

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

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

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

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

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

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

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

52 8. Notwithstanding any provision of the uniform commercial code to the
53 contrary, any pledge of or other security interest in revenues, moneys,
54 accounts, contract rights, general intangible or other personal property
55 made or created by the trust shall be valid, binding and perfected from
56 the time when such pledge is made or other security interest attaches

1 without any physical delivery of the collateral or further act, and the
2 lien of any such pledge or other security interest shall be valid, bind-
3 ing and perfected against all parties having claims of any kind in tort,
4 contract or otherwise against the trust irrespective of whether or not
5 such parties have notice thereof. No instrument by which such a pledge
6 or security interest is created nor any financing statement need be
7 recorded or filed.

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

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

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

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

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

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

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

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

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

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

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

54 3. The state hereby covenants with the purchasers and with all subse-
55 quent holders and transferees of bonds issued by the trust pursuant to
56 this article, in consideration of the acceptance of and payment for the

1 bonds, that the bonds of the trust issued pursuant to this article and
2 the income therefrom and all revenues, monies, and other property
3 pledged to pay or to secure the payment of such bonds shall at all times
4 be free from taxation.

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

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

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

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

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

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

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

1 lost, impaired or affected by reason of the enactment of this section
2 into law.

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

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

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

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

55 § 620. Application of state and local human rights laws. Notwith-
56 standing any provision of law to the contrary, article fifteen of the

1 executive law and title eight of the administrative code of the city of
2 New York shall apply to the trust.

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

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

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

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

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

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

1 unless the resolution of the disciplinary proceeding exonerated the
2 employee as to such act or omission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 § 3. Paragraph 1 of subdivision c of section 13-133 of the administra-
5 tive code of the city of New York, subparagraph (C) as added by chapter
6 738 of the laws of 1988, subparagraphs (D) and (E) as added by chapter
7 609 of the laws of 1995, subparagraph (F) as added by chapter 16 of the
8 laws of 1997, and subparagraph (G) as added by chapter 3 of the laws of
9 2013, is amended to read as follows:

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

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

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

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

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

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

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

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

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