

Chapter 7 of the laws of 1975

NEW YORK STATE

PROJECT FINANCE AGENCY ACT

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§ 1. Short title.

This act may be cited as the "New York state project finance agency act."

§ 2. Declaration of policy and statement of purposes.

The legislature has heretofore created the New York state urban development corporation to engage in the construction of projects to fulfill essential public purposes which are necessary for the health, safety and welfare of the people of this state, as found by the legislature in section two of the New York state urban development corporation act.

In order to assist in the completion of projects to which the corporation is contractually obligated, to provide for the orderly marketing of obligations to finance such completion, and to provide for the orderly payment of debt service of the corporation, it is hereby found and declared that a separate corporate governmental agency, to be known as the "New York state project finance agency," should be created as a single purpose agency to provide long-term financing to the New York state urban development corporation, by acquiring funds from appropriations by the state and from sale of its notes and bonds.

It is hereby declared that the aforementioned purposes are public uses and public purposes for which public money may be loaned and tax exemptions granted, and that the powers and duties of the New York state project finance agency, as hereinafter prescribed are necessary and proper for the purpose of achieving the ends here recited.

§ 3. Definitions.

As used in this act, unless a different meaning clearly appears from the context:

1. "Agency" shall mean the corporate governmental agency created by section four of this act.
2. "Bonds" and "notes" shall mean bonds and notes, respectively, issued by the agency pursuant to this act.
3. "Commissioner" shall mean the commissioner of housing and community renewal of the state.

4. "Comptroller" shall mean the comptroller of the state.

5. "Corporation" shall mean the New York state urban development corporation.

6. "Corporation first mortgage" shall mean a first mortgage on a corporation project securing a loan by the corporation.

7. "Corporation project" shall mean a residential project as defined in the New York state urban development corporation act.

8. "Eligible loan" shall mean a loan by the agency to the corporation, approved by the commissioner as provided in this act, evidenced by the issuance to the agency of notes of the corporation (which for this purpose may be negotiable or non-negotiable and may have any term not exceeding fifty years), and secured by the pledge and assignment of a corporation first mortgage and any contract or arrangement for the payment of subsidy to the corporation on account of the corporation project securing such mortgage, as well as by the pledge and assignment of such other existing and future assets and revenues of the corporation and the receipts to be derived therefrom as may be determined by the commissioner to be required in order for the agency to obtain borrowings to finance such eligible loan.

9. "Eligible purchase" shall mean the purchase by the agency from the corporation of a corporation first mortgage and the assignment to the agency of any contract or arrangement for the payment of subsidy to the corporation on account of the corporation project securing such mortgage.

§ 4. New York state project finance agency.

1. There is hereby created the New York state project finance agency. The agency shall be a corporate governmental agency constituting a public benefit corporation. Its membership shall consist of the

commissioner of taxation and finance, the commissioner, the director of the budget, the chairman of the New York state housing finance agency and three members to be appointed by the governor with the advice and consent of the senate. The members first appointed by the governor shall serve for terms ending two, four and six years, respectively, from January first next succeeding their appointment. Their successors shall serve for terms of six years each. Members shall continue in office until their successors have been appointed and have qualified. In the event of a vacancy occurring in the office of any member by death, resignation or otherwise, the governor shall appoint a successor with the advice and consent of the senate to serve for the balance of the unexpired term. The provisions of section thirty-nine of the public officers law shall apply to such members. The chairman of the New York state housing finance agency shall serve as chairman of the agency.

2. The powers of the agency shall be vested in and exercised by a majority of the members then in office. The commissioner of taxation and finance, the commissioner, and the director of the budget each may appoint a person from their respective department, office or division to represent such member, respectively, at all meetings of the agency from which such member may be absent. Any such representative so designated shall have the power to attend and to vote at any meeting of the agency from which the member so designating him as a representative is absent with the same force and effect as if the member designating him were present and voting. Such designation shall be by written notice filed with the chairman of the agency by each of the said members. The designation of such persons shall continue until revoked at any time by written notice to the chairman by the respective member making the designation. Such designation shall not be deemed to limit the power of the appointing member to attend and vote at any meeting of the agency.

3. The members shall serve without salary or other compensation, but each member shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of his or her official duties.

4. Such members, except as otherwise provided by law, may engage in private employment, or in a profession or business. The members,

officers and employees of the agency shall be deemed to be state officers or employees for the purposes of sections seventy-three and seventy-four of the public officers law. Notwithstanding the provisions of the preceding sentence or of any other law, any state instrumentality (including any state agency, trust fund or public benefit corporation other than the agency) may purchase from, sell to, borrow from, loan to, contract with or otherwise deal with any corporation, trust, association, partnership or other entity in which any member of the agency has a financial interest, direct or indirect, and the agency may engage in any such transaction with any other state instrumentality with which any member of the agency is affiliated as a state officer or employee, provided that prior to such transaction such interest or affiliation is disclosed to such other state instrumentality and is disclosed in the minutes of the agency, and provided further that no member having such an affiliation (except such an affiliation with the New York state housing finance agency) shall participate in any decision of the agency affecting such transaction.

5. The chief executive officer of the agency shall be the executive director of the New York state housing finance agency.

6. Notwithstanding any inconsistent provisions of law, general, special or local, no officer or employee of the state or of any civil division thereof shall be deemed to have forfeited or shall forfeit his office or employment by reason of his acceptance of membership on the agency created by this section; provided, however, that a member who holds such other public office or employment shall receive no additional compensation or allowance for services rendered pursuant to this act, but shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of such services.

7. The governor may remove any member appointed by him for inefficiency, neglect of duty or misconduct in office after giving him a copy of the charges against him and an opportunity to be heard, in person or by counsel in his defense, upon not less than ten days' notice. If any such member shall be removed, the governor shall file in the office of the department of state a complete statement of charges

made against such member and his findings thereon, together with a complete record of the proceeding.

8. The agency and its corporate existence shall terminate on the first date subsequent to the thirtieth day of April, nineteen hundred seventy-seven, which is thirty days after payment in full of all its bonds, notes or other obligations (other than obligations for repayment of appropriations), and may be sooner terminated by law, provided, however, that no such law shall take effect so long as the agency shall have bonds, notes or other obligations (other than obligations for repayment of appropriations) outstanding, unless adequate provision has been made for the payment thereof. Upon termination of the existence of the agency, all its rights and properties shall pass to and be vested in the corporation as transferee of the agency's obligations for repayment of appropriations, theretofore transferred by the state to the corporation pursuant to a chapter of the laws of nineteen hundred seventy-five, and any remaining obligations of the agency for such repayment shall be cancelled.

9. A majority of the members of the agency then in office shall constitute a quorum for the transaction of any business or the exercise of any power or function of the agency. The agency may delegate to one or more of its members, or its officers, agents or employees, such powers and duties as it may deem proper.

10. The state shall save harmless and indemnify directors, officers and employees of the agency pursuant to section seventeen of the public officers law against any claim, demand, suit or judgment arising by reason of any act or omission to act by such director, officer or employee occurring in the discharge of his duties and within the scope of his service on behalf of the agency. In the event of any claim, demand, suit or judgment based on allegations that financial loss was sustained by any person in connection with the acquisition, disposition or holding of securities or other obligations of the agency (or those of any other public corporation if such loss allegedly resulted from its dealing with the agency), a director, officer or employee of the agency shall be saved harmless and indemnified, notwithstanding the limitations

of subdivision one of section seventeen of the public officers law, unless such individual is found by a final judicial determination not to have acted, in good faith, for a purpose which he reasonably believed to be in the best interests of the agency or not to have had reasonable cause to believe that his conduct was lawful.

§ 5. Powers of the agency.

Except as otherwise limited by this act and subject to the provisions of any contract with noteholders or bondholders, the agency shall have power:

1. To sue and be sued;
2. To have a seal and alter the same at pleasure;
3. To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this act;
4. To make and alter by-laws for its organization and internal management;
5. To acquire, hold and dispose of real or personal property (whether tangible or intangible) for its corporate purposes;
6. To appoint officers, agents and employees, prescribe their duties and qualifications and fix their compensation;
7. To borrow money and issue negotiable or non-negotiable notes, bonds or other obligations and to provide for the rights of the holders thereof, and as security for the payment of the principal of and interest on any notes or bonds so issued and any agreements made in connection therewith, to assign or pledge any or all existing and future assets or revenues owned by or assigned or pledged to the agency and the receipts to be derived therefrom;

8. To accept appropriations made to it by the state and to apply the proceeds of such appropriations, together with the proceeds of borrowings by the agency and any other funds available to it, for the purposes set forth in this act, and from time to time to enter into a repayment agreement with the state in respect of such appropriations on such terms and conditions as the director of the budget determines are appropriate for the repayment of any and all outstanding sums then owed in such respect by the agency and each such agreement shall supersede all prior such agreements, provided that such repayment agreements shall require payments thereunder in any fiscal year of the agency only to the extent that the agency's revenues and receipts from operations (excluding borrowings, proceeds of sales of assets and appropriations) during its preceding fiscal year shall exceed the aggregate amount payable by the agency during such preceding year for expenses (including reasonable reserves for contingencies) and debt service (without regard to any refunding of debt) plus the amount of any eligible purchases and eligible loans made during either such year out of any balance of such revenues and receipts from operations;

9. To invest any funds held in reserve or sinking funds, or any funds not required for immediate use or disbursement, at the discretion of the agency, in obligations of the state or federal government, obligations the principal and interest of which are guaranteed by the state or federal government, or obligations of agencies of the federal government, or special time deposits in, or certificates of deposit issued by, a bank or trust company authorized to do business in this state and secured by a pledge of obligations of the United States of America or obligations of the state or obligations the principal and interest of which are guaranteed by the state or federal government or obligations of agencies of the federal government, provided that any such investment is one which may from time to time be legally purchased by savings banks of the state as investments of funds belonging to them or in their control;

10. To make eligible purchases at such purchase price as the commissioner shall approve (including a purchase price at a premium over

the par value of the corporation first mortgage to be purchased) which shall be determined on the basis that such purchase price is to be amortized over the remaining term of the corporation first mortgage at the corporation's estimated average cost of borrowing (as determined by the commissioner in accordance with any accepted method) utilizing the annual payments of principal and interest called for by such mortgage, and otherwise on such terms and conditions, not inconsistent with this act, as are satisfactory to the agency; provided that no eligible purchase shall be made by the agency unless, except as otherwise permitted by contract with bondholders or noteholders, the commissioner finds that

(a) the mortgage purchased is (or in the case of a purchase not involving the use of funds acquired through the issuance of bonds or notes of the agency, can reasonably be anticipated to become) a valid first mortgage lien on a corporation project free and clear of all other liens and encumbrances which would materially affect the value or usefulness of the property secured thereby (or that arrangements satisfactory to the commissioner for the discharge of such liens and encumbrances have been made) and that such first mortgage has been executed and recorded in accordance with the requirements of existing laws; and

(b) the estimated net revenues of such corporation project, after provision has been made to cover all probable costs of operation and maintenance, of fixed charges and operating reserves and depreciation reserves, if any, including any subsidy payments attributable to such corporation project, shall be sufficient to pay the estimated principal of and interest on all bonds or notes of the agency issued or to be issued which are allocated or re-allocated by the commissioner to the financing of the purchase of such mortgage (after giving effect to such estimated net revenues related to mortgages purchased or acquired as security for eligible loans made with state appropriations or other available funds which are concurrently allocated or re-allocated to such financing) and any fees and charges of the agency applicable to such eligible purchase.

Subject to the provisions of any contract of the agency or the corporation with their respective noteholders or bondholders, (i) the

corporation shall have authority to make an additional mortgage loan, pursuant to the private housing finance law and the New York state urban development corporation act, for any corporation project the corporation first mortgage on which has been purchased by the agency, such loan to be made on an additional mortgage junior and subordinate only to the mortgage that was purchased by the agency but otherwise equivalent to a corporation first mortgage, (ii) the agency shall have authority to make an eligible purchase, pursuant to this act, of such additional mortgage notwithstanding that it is not a corporation first mortgage, at any time at or after the making of the first advance on such additional mortgage by the corporation, with the purchase price (including any applicable premium) to be payable at such times and in such amounts as shall be agreed by the agency and the corporation, and (iii) upon such a purchase by the agency such additional mortgage may be consolidated with the corporation first mortgage previously purchased by the agency;

11. To make eligible loans on such terms and conditions, not inconsistent with this act, as are satisfactory to the agency; provided that no eligible loan shall be made by the agency unless, except as otherwise permitted by contract with bondholders or noteholders, the commissioner finds that

(a) the mortgage securing the eligible loan is (or in the case of a loan not involving the use of funds acquired through the issuance of bonds or notes of the agency, can reasonably be anticipated to become) a valid first mortgage lien on a corporation project free and clear of all other liens and encumbrances which would materially affect the value or usefulness of the property secured thereby (or that arrangements satisfactory to the commissioner for the discharge of such liens and encumbrances have been made) and that such first mortgage has been executed and recorded in accordance with the requirements of existing laws; and

(b) the estimated net revenues of such corporation project, after provision has been made to cover all probable costs of operation and maintenance, of fixed charges and operating reserves and depreciation reserves, if any, including any subsidy payments attributable to such corporation project, shall be sufficient to pay the estimated principal of and interest on all bonds or notes of the agency issued or to be

issued which are allocated or re-allocated by the commissioner to the financing of such eligible loan (after giving effect to such estimated net revenues related to mortgages purchased or acquired as security for eligible loans made with state appropriations or other available funds which are concurrently allocated or re-allocated to such financing) and any fees and charges of the agency applicable to such eligible loan;

12. To use and apply all monies received by the agency on account of the corporation first mortgages purchased by the agency or on account of the corporation first mortgages and other assets or revenues assigned or pledged to it as security for eligible loans:

(a) In the case of such corporation first mortgages and other assets or revenues assigned or pledged by the agency as security for outstanding bonds of the agency, to meet payments of principal and interest on such outstanding bonds and any fees and charges of the agency related to the respective corporation first mortgages, and any excess shall be applied in accordance with paragraph (d) of this subdivision;

(b) In the case of such corporation first mortgages and other assets or revenues assigned or pledged by the agency as security for outstanding notes of the agency, to meet payments of principal and interest on such outstanding notes (including the redemption of any note payment certificates delivered pursuant to subdivision three of section seven of this act) and any fees and charges of the agency related to the respective corporation first mortgages, and any excess shall be applied in accordance with paragraph (d) of this subdivision;

(c) In the case of any such corporation first mortgages and other assets or revenues assigned or pledged by the agency as security for its guaranty of obligations of the corporation, pursuant to subdivision twenty-one of this section, to be applied in accordance with the provisions of such guaranty, and any excess shall be applied in accordance with paragraph (d) of this subdivision; and

(d) In the case of any such corporation first mortgages and other assets or revenues not assigned or pledged by the agency as security, and in the case of excess amounts to be applied in accordance with this paragraph as provided above, first, to meet payments of principal and interest on any outstanding bonds or notes of the agency (including the

redemption of any note payment certificates delivered pursuant to subdivision three of section seven of this act) and the fees and charges of the agency, irrespective of the corporation project or projects from which such monies are derived, and, second, any balance shall be applied as follows: (i) in the case of any such monies received on account of such corporation first mortgages and other assets or revenues that had been assigned or pledged to the agency as security for eligible loans, to pay over such balance to the corporation in accordance with the terms and conditions of such eligible loans; and (ii) in the case of any such monies received on account of such corporation first mortgages that had been purchased by the agency, to make further eligible purchases or eligible loans to the extent deemed appropriate by the commissioner, to pay any remaining balance to the corporation in reduction of the agency's obligations for repayment of appropriations theretofore transferred by the state to the corporation pursuant to a chapter of the laws of nineteen hundred seventy-five, and, in the event of payment in full by the agency of such obligations, to apply any remaining balance as the members of the agency, in their discretion, with the approval of the commissioner, shall determine to be in the best interests of the agency and the corporation and their respective bondholders and noteholders.

13. To sell, at public or private sale, any obligations, property or rights representing, embodying or securing an eligible loan made by the agency or acquired in an eligible purchase;

14. In connection with the making of eligible purchases, eligible loans and commitments therefor, to make and collect such fees and charges, including but not limited to reimbursements of all costs of financing by the agency, service charges and insurance premiums, as the agency shall determine to be reasonable;

15. To consent to the modification, with respect to rate of interest, time of payment of any installment of principal or interest, security, or any other term, of any eligible loan, eligible loan commitment, eligible purchase, eligible purchase commitment, contract or agreement of any kind to which the agency is a party;

16. To exercise exclusively all rights of the mortgagee under any corporation first mortgage purchased by the agency or assigned to secure any eligible loan, to foreclose on any property subject to such mortgage or commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract or other agreement, and to bid for and purchase such property at any foreclosure or at any other sale, or acquire or take possession of any such property; and in such event the agency may complete, administer, pay the principal of and interest on any obligations incurred in connection with such property, dispose of, and otherwise deal with, such property, in such manner as may be necessary or desirable to protect the interests of the agency therein;

17. To procure insurance against any loss in connection with its property and other assets (including mortgages and mortgage loans) in such amounts, and from such insurers, as it deems desirable;

18. To accept any gifts or grants or loans of funds or property or financial or other aid in any form, including but not limited to mortgage insurance, from the federal government or any agency or instrumentality thereof or from the state or from any other source and to comply, subject to the provisions of this act, with the terms and conditions thereof;

19. To engage the services of private consultants on a contract basis for rendering professional and technical assistance and advice;

20. To enter into a contract with the New York state housing finance agency to market and service any agency bonds and notes approved by the agency and to contract with the New York state housing finance agency to render such other services as the agency may request, including but not limited to the use of the premises, personnel and personal property of the New York state housing finance agency, and to provide for reimbursement to the New York state housing finance agency from the agency for any expenses necessarily incurred by the New York state housing finance agency in carrying out the terms of any such contract. Any such contract shall be subject to the separate approval of the

director of the budget;

21. To guarantee obligations of the corporation and to assign or pledge as security for any such guaranty any or all of the obligations, property or rights representing, embodying or securing an eligible loan made by the agency or acquired in an eligible purchase;

22. To do any and all things necessary or convenient to carry out its purposes and exercise the powers expressly given and granted in this act.

§ 6. Bonds and notes of the agency.

1. (a) The agency shall have power and is hereby authorized from time to time to issue its negotiable or non-negotiable bonds and notes in such principal amount as, in the opinion of the agency, shall be necessary to provide sufficient funds for achieving its corporate purposes, including the making of eligible purchases and eligible loans, the payment of interest on bonds and notes of the agency, establishment of reserves to secure such bonds and notes, and all other expenditures of the agency incident to and necessary or convenient to carry out its corporate purposes and powers;

(b) The agency shall have power, from time to time, to issue renewal notes, to issue bonds to pay notes and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any other purpose. The refunding bonds shall be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded;

(c) Except as may otherwise be expressly provided by the agency, every issue of its notes or bonds shall be general obligations of the agency payable out of any revenues or monies of the agency, subject only to any agreements with the holders of particular notes or bonds pledging any particular receipts or revenues or other property.

2. The notes and bonds shall be authorized by resolution of the

members, shall bear such date or dates, and shall mature at such time or times, in the case of any such note, or any renewals thereof, not exceeding ten years from the date of issue of such original note, and in the case of any such bond not exceeding fifty years from the date of issue, as such resolution or resolutions may provide. The notes and bonds shall bear interest at such rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places and be subject to such terms of redemption as such resolution or resolutions may provide. The notes and bonds of the agency may be sold by the agency, at public or private sale, at such price or prices as the agency shall determine. No notes or bonds of the agency may be sold by the agency at private sale, however, unless such sale and the terms thereof have been approved in writing by (a) the comptroller, where such sale is not to the comptroller, or (b) the director of the budget, where such sale is to the comptroller.

3. Any resolution or resolutions authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of the contract with the holders thereof, as to:

(a) pledging all or any part of the fees and charges made or received by the agency, and all or any part of the payments to be received in respect of corporation first mortgages purchased by the agency or in respect of eligible loans, and any amounts realized on account of the corporation first mortgages and other assets or revenues pledged or assigned as security for such eligible loans, and other monies received or to be received, to secure the payment of bonds or notes or of any issue thereof, subject to such agreements with bondholders or noteholders as may then exist;

(b) pledging all or any part of the assets or revenues of the agency, including mortgages and other obligations, owned by or pledged or assigned to the agency, to secure the payment of the bonds or notes, subject to such agreements with bondholders or noteholders as may then exist;

(c) the use and disposition of payments received on account of mortgages and other obligations owned by or pledged or assigned to the agency;

(d) the setting aside of reserves or sinking funds and the regulation and disposition thereof;

(e) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging such proceeds to secure the payment of the notes or bonds or of any issue thereof;

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

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

(h) limitations on the amount of monies to be expended by the agency for operating, administrative or other expenses of the agency;

(i) vesting in a trustee or trustees or an agent or agents, for bondholders or noteholders, such property, rights, powers and duties in trust or as security as the agency may determine, which may, but not by way of limitation, include any or all of the rights, powers and duties of the trustee which may be appointed by bondholders or noteholders pursuant to section thirteen of this act, and limiting or abrogating the applicability of section thirteen of this act to the affected bonds or notes, the holders thereof or any trustee or agent for such holders;

(j) any other matters, of like or different character, which in any way affect the security or protection of the notes and bonds.

4. It is the intention hereof that any pledge or assignment for security made by the agency shall be valid and binding from the time when the same is made; that the monies or property so pledged or assigned and then held or thereafter received by the agency shall immediately be subject to the lien or security interest of such pledge or assignment without any physical delivery thereof or further act; and that the lien or security interest of any such pledge or assignment shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the agency, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which any such pledge or assignment is created need be recorded, and no filing with respect to such pledge or assignment

need be made under the uniform commercial code.

5. Neither the members of the agency nor any person executing the notes or bonds shall be liable personally on the notes or bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

6. The agency, subject to such agreements with noteholders and bondholders as may then exist, shall have power out of any funds available therefor to purchase notes or bonds of the agency, which shall thereupon be cancelled, at a price not exceeding (a) if the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date thereon, or (b) if the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date.

7. The state shall not be liable on notes or bonds of the agency and such notes and bonds shall not be a debt of the state, and such notes and bonds shall contain on the face thereof a statement to such effect.

§ 7. Reserve funds and appropriations.

1. (a) For the purposes of the issuance by the agency of bonds, the term "capital reserve fund requirement" shall mean, as of any particular date of computation, with respect to each capital reserve fund of the agency an amount of money equal to the greatest of the respective amounts, for the then current or any succeeding calendar year, of annual debt service payments of the agency on the bonds secured by such capital reserve fund, such annual debt service payments for any calendar year being an amount of money equal to the aggregate of the following with respect to all such bonds of the agency outstanding on said date of computation; (i) all interest payable during such calendar year, plus (ii) the principal amount which matures (net of any sinking fund payments payable in prior years) during such calendar year, plus (iii) the amount of all sinking fund payments payable during such calendar

year; and the term "sinking fund payment" shall mean the amount of money specified in the resolution authorizing term bonds as payable into a sinking fund for the amortization of such term bonds. The agency may create and establish one or more special funds to be known as capital reserve funds and may pay into each such reserve fund (1) any monies appropriated and made available by the state for the purposes of such fund, (2) any proceeds of sale of notes or bonds, to the extent provided in the resolution of the agency authorizing the issuance thereof, and (3) any other monies which may be made available to the agency for the purposes of such fund from any other source or sources. The monies held in or credited to any capital reserve fund established under this subdivision, except as hereinafter provided, shall be used solely for the payment of the principal of bonds of the agency secured by such reserve fund, as the same mature, sinking fund payments with respect to such bonds of the agency, the purchase of such bonds of the agency, the payment of interest on such bonds of the agency, or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity; provided, however, that monies in any such fund shall not be withdrawn therefrom at any time in such amount as would reduce the amount of such fund to less than the capital reserve fund requirement, except for the purpose of paying principal and interest on the bonds of the agency secured by such reserve fund maturing and becoming due or any sinking fund payments with respect to such bonds and for the payment of which other monies of the agency are not available. Any income or interest earned by, or increment to, any capital reserve fund due to the investment thereof may be transferred to any other fund or account of the agency to the extent it does not reduce the amount of such capital reserve fund below the capital reserve fund requirement.

(b) The agency shall not issue bonds at any time if upon issuance, the amount in the capital reserve fund securing such bonds will be less than the capital reserve fund requirement unless the agency, at the time of issuance of such bonds shall deposit in such reserve fund from the proceeds of the bonds so to be issued, or otherwise, an amount which together with the amount then in such reserve fund, will be not less than the capital reserve fund requirement.

(c) To assure the continued operation and solvency of the agency for the carrying out of the public purposes of this act, provision is made

in paragraph (a) of this subdivision for the accumulation in each capital reserve fund of an amount equal to the capital reserve fund requirement. In order further to assure the maintenance of each such capital reserve fund, there shall be annually apportioned and paid to the agency for deposit in each capital reserve fund such sum, if any, as shall be certified by the chairman of the agency to the governor and director of the budget as necessary to restore such reserve fund to an amount equal to the capital reserve fund requirement. The chairman of the agency shall annually, on or before December first, make and deliver to the governor and director of the budget his certificate stating the sum or sums, if any, required to restore each such capital reserve fund to the amount aforesaid and the sums so certified, if any, shall be apportioned and paid to the agency during the then current state fiscal year.

(d) In computing any capital reserve fund for the purposes of this section, securities in which all or a portion of such reserve fund shall be invested shall be valued at par if purchased at par, or if purchased at other than par, at amortized value. As used herein "amortized value" shall mean, when used with respect to securities purchased at a premium above or a discount below par, the value as of any given date obtained by dividing the total amount of the premium or discount at which such securities were purchased by the number of days remaining to maturity on such securities at the time of such purchase and by multiplying the amount so calculated by the number of days having passed since the date of such purchase; and (a) in the case of securities purchased at a premium, by deducting the product thus obtained from the purchase price, and (b) in the case of securities purchased at a discount, by adding the product thus obtained to the purchase price.

2. The agency may create and establish one or more special funds (herein each referred to as a general reserve fund) and shall pay into each such fund, to the extent required by agreements with holders of bonds or notes secured by such fund, all fees and charges collected by the agency pursuant to subdivision fourteen of section five of this act and any monies which the agency shall transfer from the related capital reserve fund pursuant to the provisions of paragraph (a) of subdivision one of this section. Such monies and any other monies paid into a

general reserve fund may, in the discretion of the agency, but subject to agreement with bondholders or noteholders, be used by the agency (a) for the repayment of advances from the state in accordance with the provisions of repayment agreements between the agency and the director of the budget, (b) to reimburse the division of housing and community renewal the reasonable costs of the services performed by the commissioner and the division pursuant to the provisions of this act, (c) to pay all costs, expenses and charges of financing, including fees and expenses of trustees and paying agents, (d) for transfers to the related capital reserve fund, (e) for the payment of principal and interest on bonds or notes issued by the agency and secured by such general reserve fund when the same shall become due whether at maturity or on call for redemption and for the payment of any redemption premium required to be paid where such bonds or notes are redeemed prior to their stated maturities and any sinking fund payments, and to purchase such bonds or notes issued by the agency, or (f) for such other corporate purposes of the agency as the agency in its discretion shall determine and provide.

3. (a) This subdivision shall be applicable if the agency shall issue notes (herein called "secured notes") secured by the pledge and assignment of assets or revenues of the agency, with provision under certain circumstances for amortization of the principal amount of such notes over a period of years. Upon the issuance of any secured notes, and if necessary upon the actual commencement of amortization of principal, the agency shall determine the amount which, notwithstanding the actual terms of such notes for payment of interest and principal or for the application thereto of receipts from the pledged assets or revenues, would then be required to be provided as hypothetical monthly level debt service payments in order to pay the stated interest on and to amortize the maximum principal amount of the secured notes over the longest period of years then allowed for full amortization of principal under the terms of the secured notes. The aggregate for all secured notes of the portion of such hypothetical level debt service payments that would be payable in any twelve consecutive months during such period of amortization thereof, but in no event an amount greater than twenty per cent of the maximum principal amount of the secured notes, as

of any particular date of computation, is herein called the "note service requirement" of the agency.

(b) The agency shall create and establish a special fund to be known as the "note service reserve fund," and upon the issuance of any secured notes shall create and deposit therein note payment certificates (herein called "note payment certificates") in an aggregate principal amount equal to the note service requirement as then computed. Any note payment certificates that are in excess of the note service requirement upon a recomputation of such requirement shall be withdrawn from such fund and cancelled. Note payment certificates shall be obligations of the agency, issuable and re-issuable in any denominations, deliverable as further evidence of and security for unpaid amounts of interest or principal on secured notes which are not paid when due because the agency has insufficient funds available to make such payments in cash, bearing interest to the same extent as the unpaid amounts of interest or principal on the secured notes in connection with which they are delivered continue to accrue interest, and redeemable by the agency upon payment in cash of the principal amount of the redeemed note payment certificates plus any interest accrued thereon from date of delivery to date of redemption. Any note payment certificates so redeemed, or an equal principal amount of certificates created in replacement thereof, shall be redeposited in the note service reserve fund, to the extent necessary to cause the principal amount deposited in such reserve fund to equal the note service requirement, as then computed, and any excess note payment certificates redeemed shall be cancelled. The note service reserve fund may be maintained with any trustee or agent for the holders of secured notes and the note payment certificates may be deposited with such trustee or agent to be held in trust prior to delivery thereof as further security for the payment of principal of or interest on the secured notes when due. Such trustee or agent shall have no obligation to realize upon any pledged assets or revenues either prior to delivering note payment certificates upon the failure of the agency to pay interest or principal when due or thereafter and prior to redemption of such certificates. However, any realization upon any pledged assets or revenues and any other payments made on account of the secured notes shall be applied to the payments of principal of or interest on the secured notes (including redemption of delivered note payment

certificates) in the order in which such payments originally became due. The proceeds of each redemption of note payment certificates shall be applied as payment of an equivalent amount of overdue principal of or interest on the secured notes.

(c) In order to assure the availability of funds to maintain the note service reserve fund at an amount equal to the note service requirement of the agency, there shall be annually apportioned and paid to the agency, for application exclusively to the redemption of delivered note payment certificates, such sum, if any, as shall be certified by the chairman of the agency to the governor and director of the budget as estimated to be necessary to redeem by the end of the then current state fiscal year all note payment certificates theretofore delivered and not redeemed by payment in full of the principal amount thereof and any interest accrued thereon. The chairman of the agency shall annually, on or before December first, make and deliver to the governor and director of the budget his certificate stating the sum, if any, estimated to be required to redeem all such note payment certificates as aforesaid by the end of the then current state fiscal year, and the sum so certified, if any, shall be apportioned and paid to the agency during the then current state fiscal year. Upon its receipt of such payment from the state, the agency shall immediately apply such payment, to the extent thereof, to the redemption of outstanding note payment certificates.

§ 8. Bonds and notes as legal investments.

The bonds and notes of the agency are hereby made securities in which all public officers and bodies of this state and all 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, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in

their control or belonging to them.

§ 9. Exemption from taxation of property and income.

The property of the agency and its income and operations shall be exempt from taxation.

§ 10. Exemption from taxation of notes and bonds.

It is hereby determined that the creation of the agency is in all respects for the benefit of the people of the state and for the improvement of their health, safety, welfare, comfort and security, and that said purposes are public purposes and that the agency will be performing an essential governmental function in the exercise of the powers conferred upon it by this act. The state covenants with the purchasers and all subsequent holders and transferees of notes and bonds issued by the agency, in consideration of the acceptance of and payment for the notes and bonds, that the notes and bonds of the agency, issued pursuant to this act and the income therefrom and all its fees, charges, gifts, grants, revenues, receipts, and other monies received or to be received, pledged to pay or secure the payment of such notes or bonds shall at all times be free from taxation, except for estate and gift taxes and taxes on transfers.

§ 11. Agreement with the state.

The state does hereby pledge to and agree with the holders of any notes or bonds issued under this act, that the state will not limit or alter the rights hereby vested in the agency to fulfill the terms of any agreements made with the holders thereof, or in any way impair the rights and remedies of such holders until such notes or bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and

discharged. The agency is authorized to include this pledge and agreement of the state in any agreement with the holders of such notes or bonds.

§ 12. State's right to require redemption of bonds.

Notwithstanding and in addition to any provisions for the redemption of bonds which may be contained in any contract with the holders of the bonds, the state may, upon furnishing sufficient funds therefor, require the agency to redeem, prior to maturity, as a whole, any issue of bonds on any interest payment date not less than twenty years after the date of the bonds of such issue at one hundred five per centum of their face value and accrued interest or at such lower redemption price as may be provided in the bonds in case of the redemption thereof as a whole on the redemption date. Notice of such redemption shall be published at least twice in each of at least one newspaper publishing and circulating in the county of Albany and at least one newspaper publishing and circulating in the city of New York, the first publication to be at least thirty days before the date of redemption.

§ 13. Remedies of noteholders and bondholders.

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

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

(a) by suit, action or proceeding in accordance with the civil practice law and rules, enforce all rights of the noteholders or bondholders, including the right to require the agency to collect fees and charges and interest and amortization payments on mortgages purchased and eligible loans made by it adequate to carry out any agreement as to, or pledge of, such fees and charges and interest and amortization payments on such mortgages and loans and other properties and to require the agency to carry out any other agreements with the holders of such notes or bonds and to perform its duties under this act;

(b) bring suit upon such notes or bonds;

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

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

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

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

4. The supreme court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of such noteholders or bondholders. The venue of any such suit, action or proceeding shall be laid in the county of Albany.

5. Before declaring due and payable the principal of notes or bonds issued in connection with any mortgage purchased by the agency or securing an eligible loan made by the agency, the trustee shall first give thirty days' notice in writing to the governor, to the agency, to

the commissioner and to the attorney general of the state.

§ 14. Monies of the agency.

1. All monies of the agency, except as otherwise authorized or provided in this act, shall be paid to the commissioner of taxation and finance as agent of the agency, who shall not commingle such monies with any other monies. Such monies shall be deposited in a separate bank account or accounts. The monies in such accounts shall be paid out on checks signed by the commissioner of taxation and finance on requisition of the chairman of the agency or of such other officer or employee as the agency shall authorize to make such requisition. All deposits of such monies shall, if required by the commissioner of taxation and finance or the agency, be secured by obligations of the United States or of the state of a market value equal at all times to the amount of the deposit and all banks and trust companies are authorized to give such security for such deposits.

2. Subject to agreements with noteholders and bondholders and the approval of the comptroller, the agency shall prescribe a system of accounts.

Notwithstanding the provisions of this section, the agency shall have power, subject to the approval of the commissioner of taxation and finance, to contract with the holders of any of its notes or bonds as to the custody, collection, securing, investment and payment of any monies of the agency, of any monies held in trust or otherwise for the payment of notes or bonds, and to carry out such contract. Monies held in trust or otherwise for the payment of notes or bonds or in any way to secure notes or bonds and deposits of such monies may be secured in the same manner as monies of the agency, and all banks and trust companies are authorized to give such security for such deposits.

3. The comptroller, or his legally authorized representative, is hereby authorized and empowered from time to time to examine the books and accounts of the agency including its receipts, disbursements,

contracts, reserve funds, sinking funds, investments, and any other matters relating to its financial standing. Such an examination shall be conducted by the comptroller at least once in every five years; the comptroller is authorized, however, to accept from the agency, in lieu of such an examination, an external examination of its books and accounts made at the request of the agency.

4. The agency shall submit to the governor, chairman of the senate finance committee, chairman of the assembly ways and means committee and the comptroller, within thirty days of the receipt thereof by the agency, a copy of the report of every external examination of the books and accounts of the agency other than copies of the reports of such examination made by the comptroller.

§ 15. Supervision of projects.

Notwithstanding any provision of law to the contrary, and upon the issuance by the commissioner of a certificate of assumption of supervision, any corporation project a mortgage on which has been purchased by the agency or assigned as security for an eligible loan shall be subject to the supervision and control of the commissioner and the New York state division of housing and community renewal, which shall have the same powers and responsibilities with respect to such project as they would have if such project were aided by a loan from the state or the New York state housing finance agency under article two of the private housing finance law and which shall assume the additional powers and responsibilities with respect to such project theretofore conferred on the corporation by law or contract. The corporation and the commissioner shall take such actions and execute such documents as may be necessary to implement this section.

§ 16. Assistance by state officers, departments, boards and commissions.

1. The department of audit and control, department of law, division of

housing and community renewal and all other state officers, departments, boards, divisions and commissions may render such services to the agency within their respective functions as may be requested by the agency.

2. The commissioner and the division of housing and community renewal are hereby designated to act for and in behalf of the agency in servicing the corporation first mortgages purchased by the agency or securing eligible loans of the agency, and shall perform such additional functions and services in connection with the making, servicing and collection of such eligible loans as shall be requested by the agency. The agency shall pay to the division of housing and community renewal from any monies of the agency available for such purpose, such amounts as are necessary to reimburse the division of housing and community renewal for the reasonable cost of the services performed by the commissioner and the division of housing and community renewal pursuant to this section.

§ 17. Annual report.

The agency shall submit to the governor, the chairman of the senate finance committee, the chairman of the assembly ways and means committee, the comptroller and the director of the budget within one hundred eighty days after the end of its fiscal year, a complete and detailed report setting forth: (1) its operations and accomplishments; (2) its receipts and expenditures during such fiscal year in accordance with the categories or classifications established by the agency, including a listing of all private consultants engaged by the agency on a contract basis and a statement of the total amount paid to each such private consultant; (3) its assets and liabilities at the end of its fiscal year, including a schedule of its eligible purchases, eligible loans and commitments and the status of reserve, special or other funds; and (4) a schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year.

§ 18. Maximum authorization.

The agency shall not issue bonds and notes in an aggregate principal amount exceeding three hundred five million dollars, excluding bonds and notes issued to refund or otherwise repay outstanding bonds and notes of the agency or of the corporation.

§ 19. Partial invalidity.

If any provision of this act, or the application thereof to any person or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unenforceable, such judgment shall not affect, impair or invalidate the remainder of this act or the application of such provision to any other person or circumstance, but shall be confined in its operation to the provision, person and circumstance directly involved in the controversy in which such judgment shall have been rendered.

§ 20. Inconsistent provisions in other laws superseded.

Insofar as the provisions of this act are inconsistent with the provisions of any other law, general, special or local, the provisions of this act shall be controlling.

§ 21. Certain special proceedings.

In the event that the agency or the corporation shall have occasion at any time to seek declaratory relief in the courts with respect to any matters relating to transactions contemplated by this act, any request for such relief shall be brought as a special proceeding and conducted in accordance with article four of the civil practice law and rules. Any such special proceeding shall be preferred over all other civil causes except election causes in all courts of the state of New York and shall be heard and determined in preference to all other civil business

pending therein except election causes, irrespective of position on the calendar. In any such special proceeding, the court hearing the matter shall have authority in its discretion to award, as against the agency or the corporation, the reasonable counsel fees and expenses of a party or intervenor opposing such declaratory relief, based on the court's determination as to the contribution made to the sound and orderly resolution of the proceeding by the participation of such party or intervenor therein, and the court hearing the matter may in its discretion appoint counsel to represent a class of persons having interests in opposition to such declaratory relief being sought and may award reasonable counsel fees and expenses as aforesaid on account of such representation.

§ 21-a. Actions against corporation. Except in an action for wrongful death, in any case founded upon tort a notice of claim shall be required as a condition precedent to the commencement of an action or special proceeding against the agency and the provisions of section fifty-e of the general municipal law shall govern the giving of such notice. No such action shall be commenced more than one year and ninety days after the cause of action therefor shall have accrued. An action 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.

§ 22. Construction.

This act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed so as to effectuate its purposes.