*** § 1128. Bonds of the authority.** 1. The authority shall have the power and is hereby authorized from time to time to issue bonds in such principal amounts as it may determine to be necessary to pay the cost of any project or for any other corporate purpose, including incidental expenses in connection therewith. The authority shall have power from time to time to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose. Bonds issued by the authority may be general obligations secured by the faith and credit of the authority or may be special obligations payable solely out of particular revenues or other moneys as may be designated in the proceedings of the authority under which the bonds shall be authorized to be issued, subject only to any agreements with the holders of outstanding bonds pledging any particular revenues, earnings or moneys.

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

3. (a) Bonds shall be authorized by resolution of the authority, be in such denominations, bear such date or dates and mature at such time or times as such resolution may provide, except that bonds and any renewals thereof shall mature within forty years from the date of their original issuance and notes and any renewals thereof shall mature within five years from the date of their original issuance. Bonds shall be subject to such terms of redemption, bear interest at such rate or rates per annum, which may vary from time to time, as may be necessary to effect the sale thereof and shall be payable at such times, be in such form, carry such registration privileges, be executed in such manner, be

subject to tender to the authority, with or without extinction or cancellation, be payable in such medium of payment at such place or places, and be subject to such terms and conditions as such resolution may provide. Bonds may be sold at public or private sale for such price or prices as the authority shall determine, provided that no bonds of the authority may be sold by the authority at private sale unless such sale and the terms thereof have been approved in writing by the comptroller, where such sale is not to be to such comptroller, or by the state director of the budget, where such sale is to be to the comptroller.

(b) The state comptroller shall promulgate rules in conformance with the state administrative procedure act governing the sale on a negotiated basis of bonds, notes and certificates of participation by public authorities and public benefit corporations made subject to such rules by law. No such sale by the authority on a negotiated basis shall be conducted without prior approval of the state comptroller except as provided in such rules, which shall set forth the circumstances under which such approval shall not be required. Such rules shall be reviewed at least annually and updated as may be necessary. The corporation shall annually deliver to the senate finance committee, the assembly ways and means committee and the director of the division of the budget a report listing all such sales conducted in the previous year, including but not limited to the name of the issuer, the amount of the issue, the interest rate and interest cost per year for each such sale.

(c) Agreements for credit enhancement. (1) The authority is hereby authorized and empowered to enter into such agreements as it deems reasonable and appropriate, with any department or agency of the United States of America, the state, or any other financially responsible party, to facilitate the issuance, sale, resale and payment of bonds, notes, or other evidences of indebtedness of the authority, including, but not limited to letters of credit, lines of credit, revolving credit, bond insurance or other credit enhancements. Such agreements may provide for: (i) the advance or advances of funds on behalf of the authority to pay bonds, notes or other evidences of indebtedness of the authority on their date or dates of maturity or redemption; and (ii) the reimbursement of such advance or advances by the authority.

(2) Such agreements may be executed on or before the date of issuance

of the obligations to be paid pursuant thereto, provided, however, that any reimbursement obligation of the authority shall be deemed indebtedness of the authority; (i) only as of the date that the corresponding advance is made pursuant to subparagraph one of this paragraph; and (ii) only in the amount of the advance made pursuant to such subparagraph. Such agreements may include a pledge by the authority of its faith and credit for the payment of any indebtedness deemed to be contracted as set forth in this paragraph, and may provide that any such indebtedness arising from a reimbursement obligation contracted pursuant to this section shall be paid in accordance with the terms of such agreement. Such indebtedness shall be excluded in ascertaining the power of the authority to contract indebtedness pursuant to this chapter. Such agreements shall also include such terms and conditions as the authority shall deem appropriate, including provisions for the payment of reasonable fees by the authority in return for a commitment to advance funds pursuant to such agreement. Such fees shall be deemed part of the cost of the object or purpose in connection with which they are incurred.

(3) Prior to procurement of any credit or liquidity enhancements, the authority shall, to the extent practicable:

(i) consider the ability of the credit or liquidity enhancement provider to make required payments as and when due under the terms of the appropriate governing instruments;

(ii) consider the business reputation of the credit or liquidity enhancement provider;

(iii) consider the maximum term of the credit or liquidity enhancement relative to the maturity of the bonds, notes or other obligations being credit or liquidity enhanced;

(iv) provide for the right of substitution for the credit or liquidity enhancement provider in all agreements, including a provision permitting such substitution when the rating of the credit or liquidity enhancement provider falls below the probable credit rating of the issue without considering the credit or liquidity enhancer; and

(v) consider the cost of the credit or liquidity enhancement relative to the savings or other benefit likely to be achieved through the utilization of the credit or liquidity enhancement.

(4) Where the credit or liquidity enhancement procured is an

irrevocable letter of credit or an acquisition arrangement with a liquidity enhancer, such instrument shall be:

(i) issued or confirmed by a bank holding company or its direct subsidiaries, a federally chartered bank or its subsidiaries, or a state chartered bank or its subsidiaries, licensed or authorized to do business in this state; and

(ii) issued or confirmed by an agency or branch of a foreign banking institution licensed to do business in this state with total worldwide assets in excess of five billion dollars.

(5) Any such issuing banking organization referred to in subparagraph four of this paragraph shall meet the regulatory guidelines for capital adequacy as promulgated by the appropriate federal banking agency as defined in the Federal Deposit Insurance Act, 12 U.S.C. 1813(q).

(6) Where the credit or liquidity enhancement procured is provided by an insurance company, such insurer shall be licensed to write financial guarantee insurance in this state.

(7) The failure of the authority to comply with subparagraphs three through six of this paragraph shall not invalidate or impair any credit or liquidity enhancement contract or instrument.

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

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

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

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

(d) the rates, rents, fees and other charges to be fixed and collected by the authority and the amount to be raised in each year thereby, and the use and disposition of revenues;

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

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

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

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

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

(j) vesting in a trustee or trustees such properties, rights, powers and duties in trust as the authority may determine which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to section one thousand one hundred twenty-nine of this title and limiting or abrogating the rights of the bondholders to appoint a trustee under such section or limiting the rights, duties and powers of such trustee;

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

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

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

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

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

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

6. Any provision of the uniform commercial code to the contrary notwithstanding, any pledge of or other security interest in revenues, moneys, accounts, contract rights, general intangibles or other personal property made or created by the authority shall be valid, binding and perfected from the time such pledge is made or other security interest attaches without any physical delivery of the collateral or further act, and the lien of any such pledge, or other security interest shall be valid, binding and perfected against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether or not such parties have notice thereof. No instrument by which such a pledge or security interest is created nor any financing statement need be recorded or filed.

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

8. Neither the members of the authority nor any person executing bonds shall be liable personally thereon or be subject to any personal

liability or accountability by reason of the issuance thereof.

9. The authority, subject to such agreements with bondholders as then may exist, shall have power out of any moneys available therefor to purchase bonds of the authority, which shall thereupon be cancelled at a price not exceeding; (i) if the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date, or (ii) if the bonds are not then immediately redeemable then the redemption price applicable on the first date after such purchase upon which the bonds become subject to redemption, plus accrued interest to the next interest payment date.

* NB There are 2 § 1128's