§ 385. Additional powers of the authority to issue special dedicated highway and bridge trust fund bonds. 1. (a) The authority is hereby authorized, as an additional corporate purpose thereof: (i) to enter into a dedicated highway and bridge trust fund cooperative agreement or agreements with the commissioner of transportation for the financing by the authority of disbursements made by the state or project sponsor for any of the activities authorized pursuant to the provisions of section eighty-nine-b of the state finance law in any case where the expense thereof is paid in whole or in part by the state or project sponsor; and (ii) to issue use permits or leases to the department of transportation, or project sponsor, as the case may be, for projects financed by the authority of disbursements made by the state or project sponsor in accordance with the provisions of a dedicated highway and bridge trust fund cooperative agreement or agreements, provided that such projects are maintained and operated under the supervision of the department of transportation without cost to the New York state thruway authority for the full term of such agreement or agreements, and provided further that such use permit or lease shall be granted by the authority on a toll free basis. Provided, however, that at any time after April first, nineteen hundred ninety-five, no dedicated highway and bridge trust fund cooperative agreement with the commissioner of transportation pursuant to this section, nor any supplement thereto, need provide any conveyance of an interest in the property to the New York state thruway authority in connection with any obligations incurred pursuant to this section; and any such conveyance evidenced by a dedicated highway and bridge trust fund cooperative agreement before such date shall, consistent with the rights of holders of any such obligations incurred pursuant to this section, revert to the people of the state of New York by appropriate instrument or instruments, by quitclaim deed or otherwise, in confirmation of such reversion and any related use permits shall be voided.

(b) The authority is hereby authorized, as additional corporate purposes thereof solely upon the request of the director of the budget: (i) to issue special emergency highway and bridge trust fund bonds and notes for a term not to exceed thirty years and to incur obligations secured by the moneys appropriated from the dedicated highway and bridge trust fund established in section eighty-nine-b of the state finance

law; (ii) to make available the proceeds in accordance with instructions provided by the director of the budget from the sale of such special emergency highway and bridge trust fund bonds, notes or other obligations, net of all costs to the authority in connection therewith, for the purposes of financing all or a portion of the costs of activities for which moneys in the dedicated highway and bridge trust fund established in section eighty-nine-b of the state finance law are authorized to be utilized or for the financing of disbursements made by the state for the activities authorized pursuant to section eighty-nine-b of the state finance law; and (iii) to enter into agreements with the commissioner of transportation pursuant to section ten-e of the highway law with respect to financing for any activities authorized pursuant to section eighty-nine-b of the state finance law, or agreements with the commissioner of transportation pursuant to sections ten-f and ten-g of the highway law in connection with activities on state highways pursuant to these sections, and (iv) to enter into service contracts, contracts, agreements, deeds and leases with the director of the budget or the commissioner of transportation and project sponsors and others to provide for the financing by the authority of activities authorized pursuant to section eighty-nine-b of the state finance law, and each of the director of the budget and the commissioner of transportation are hereby authorized to enter into service contracts, contracts, agreements, deeds and leases with the authority, project sponsors or others to provide for such financing. The authority shall not issue any bonds or notes in an amount in excess of twenty-two billion three hundred nine million two hundred ninety-four thousand dollars $22,309,294,000, plus a principal amount of bonds or notes: (A) to fund capital reserve funds; (B) to provide capitalized interest; and, (C) to fund other costs of issuance. In computing for the purposes of this subdivision, the aggregate amount of indebtedness evidenced by bonds and notes of the authority issued pursuant to this section, as amended by a chapter of the laws of nineteen hundred ninety-six, there shall be excluded the amount of bonds or notes issued that would constitute interest under the United States Internal Revenue Code of 1986, as amended, and the amount of indebtedness issued to refund or otherwise repay bonds or notes.

(c) Such obligations shall be issued or incurred with the approval of

the director of the budget and shall be special obligations of the authority secured by and payable solely out of amounts appropriated by the legislature as authorized pursuant to section eighty-nine-b of the state finance law without recourse against any other assets, revenues or funds of or other payments due to the authority. Upon payments of such appropriated amounts from the fund established pursuant to section eighty-nine-b of the state finance law to the account of the authority, such funds may be pledged by the authority to secure its bonds, notes and other obligations authorized by paragraph (b) of this subdivision and shall be held free and clear of any claim by any person arising out of or in connection with articles twelve-A, thirteen-A and twenty-one of the tax law. Without limiting the generality of the foregoing and without limiting the rights and duties of the commissioner of taxation and finance under articles twelve-A, thirteen-A and twenty-one of the tax law, no taxpayer, or any other person, including the state, shall have any right or claim against the authority or any of its bondholders to any moneys appropriated and transferred from the dedicated highway and bridge trust fund established by section eighty-nine-b of the state finance law for or in respect of a refund, rebate, credit, reimbursement or other repayment of taxes paid under such articles of the tax law.

(d) The notes, bonds or other obligations of the authority authorized by this section shall not be a debt of the state and the state shall not be liable thereon, nor shall they be payable out of any funds other than those of the authority pledged therefor; and such bonds and notes shall contain on the face thereof a statement to such effect. In addition, any agreements entered into by the department of transportation pursuant to sections ten-e, ten-f and ten-g of the highway law or any other entity on behalf of the state to effect the implementation of any of the activities financed in whole or in part with proceeds of the obligations of the authority authorized in this section do not constitute or create a debt of the state, nor a contractual obligation in excess of the amounts appropriated therefor and the state has no continuing legal or moral obligation to appropriate money for payments due under such contracts.

(e) All of the provisions of this title relating to bonds and notes, which are not inconsistent with the provisions of this section, shall apply to obligations authorized by this section, including but not

limited to the power to establish adequate reserves therefor and to issue renewal notes or refunding bonds thereof, provided, however, that the authority shall be authorized to issue variable rate bonds or notes pursuant to this section only until June thirtieth, two thousand, after which date no bonds or notes issued by the authority pursuant to this section may have interest rates which vary, provided further that the expiration of such authority shall not affect any such bonds or notes issued prior to such date.

2. Not less than one hundred twenty days before the beginning of each state fiscal year, the chairman of the authority shall certify to the comptroller and to the director of the budget a schedule of anticipated cash requirements for such fiscal year pursuant to any agreements entered into by the authority with the commissioner of transportation pursuant to sections ten-e, ten-f and ten-g of the highway law. The amounts so certified shall constitute required dedicated highway and bridge trust fund cooperative agreement payments due pursuant to such agreements under sections ten-e, ten-f and ten-g of the highway law. The total amount so certified for such fiscal year shall be equal to the total amount of the debt service due or expected to be due during such fiscal year on obligations of the authority incurred pursuant to subdivision one of this section, including payments of interest and principal (including sinking fund payments), together with:

(a) the amount, if any, due to any provider of any insurance policy, letter of credit or other letter of enhancement or a related facility with respect to such obligations, representing payments made by it as provided in the applicable resolution or trust indenture as a result of any previous failure of the state to make any payment provided for in this section, including any related reasonable interest, fees or charges so provided;

(b) the amount, if any, required to restore any applicable reserve fund to the applicable reserve fund requirement to the extent any deficiency therein has resulted directly or indirectly from failure by the state to make any payment provided for in this section;

(c) the amount, if any, required to be rebated to the United States to provide for continued exclusion from federal income taxation of interest on obligations of the authority; and

(d) the expenses of the establishment and continued operating expenses of the authority related to the financing of activities funded with the proceeds of obligations authorized by subdivision one of this section, including, but not limited to, trustees' fees, fees payable to providers of credit facilities, fees for issuing and paying agents, remarketing agents and dealers, legal counsel, financial or other advisors or consultants, independent auditors, rating agencies, transfer or information agents, the publication of advertisements and notices, surety arrangements, and printers' fees or charges incurred by the authority to comply with applicable federal and state securities and tax laws; and any other costs of issuance in excess of the amount provided therefor from the proceeds of the sale of such obligations, to the extent that any of the foregoing amounts or expenses are not to be paid from other resources available to the authority for such purpose.

3. The chairman of the authority may revise such certification at such times as shall be determined by the chairman; provided, however, that the chairman of the authority shall revise such certification not later than thirty days after the issuance of any obligations authorized pursuant to subdivision one of this section including refunding bonds, and affecting the cash requirements of the authority with respect to the obligations incurred pursuant to this section.

4. Such certification shall provide for payments on such dates as the authority and the director of the budget deems appropriate to ensure that sufficient funds will be available from the sources identified in this section to enable it to meet its current obligations with respect to those obligations incurred pursuant to this section as they become due.

5. Upon receipt of such certification, or any revision thereof, the comptroller shall pay such dedicated highway and bridge trust fund cooperative agreement payments to the authority in accordance with such certification, from the dedicated highway and bridge trust fund established by section eighty-nine-b of the state finance law. Such payments shall be made on or before the date specified in each certificate or within thirty days after such receipt, whichever is

later, provided that all such amounts shall have been first appropriated by the state.

6. The agreement of the state contained in this section shall be deemed executory only to the extent of appropriations available for payments under this section and no liability on account of any such payment shall be incurred by the state beyond such appropriations. The state, acting through the director of the budget, and the authority may enter into, amend, modify, or rescind one or more agreements providing for the specific manner, timing, and amount of payments to be made under this section, but only in conformity with this section.

7. The authorization, sale and issuance of bonds, notes or other obligations pursuant to this section shall not be deemed an action as such term is defined in article eight of the environmental conservation law for the purposes of such article. Such exemption shall be strictly limited in its application to such financing activities of the authority and does not exempt the department of transportation or any other entity from compliance with such article.

8. The state of New York shall and hereby agrees to and does indemnify and save harmless the New York state thruway authority from and against any and all liability, loss, damage, interest, judgments and liens growing out of, and any and all costs and expenses (including, but not limited to, counsel fees and disbursements) arising out of or incurred in connection with any and all claims, demands, suits, actions or proceedings which may be made or brought against the New York state thruway authority arising out of any determinations made or actions taken or omitted to be taken or compliance with any obligations under or pursuant to this section.

9. Nothing contained in this section shall be deemed to restrict the right of the state to amend, repeal, modify or otherwise alter statutes imposing or relating to any taxes or fees, including the taxes imposed pursuant to section two hundred eighty-four, articles thirteen-A and twenty-one of the tax law and fees imposed by section four hundred one of the vehicle and traffic law. The authority shall not include within

any resolution, contract or agreement with holders of the bonds, notes and other obligations issued under this title any provision which provides that a default occurs as a result of the state exercising its right to amend, repeal, modify or otherwise alter any such taxes and fees.

10. Any resolution authorizing bonds, notes or other obligations shall reserve the right of the state, upon amendment of the New York state constitution allowing the issuance, or assumption, of bonds, notes or other obligations secured by revenues, which may include the revenues securing bonds, notes or other obligations of the authority, (i) to assume, in whole or in part, such bonds, notes or other obligations of the authority, (ii) to extinguish the existing lien of such resolution, and (iii) to substitute security for the bonds, notes, or other obligations of the authority, in each case only so long as such assumption, extinguishment or substitution is done in accordance with such resolution.