

ACTS, 1982. - Chap. 381.

not be held within one year after its passage this act shall cease to be operative.

Approved August 23, 1982.

EMERGENCY LETTER - August 26, 1982 @ 4:18 P.M.

Chap. 381. AN ACT ESTABLISHING THE LYNN WATER AND
SEWER COMMISSION AND DEFINING THE POWERS
THEREOF.

Be it enacted, etc., as follows:

SECTION 1. It is hereby declared essential for the benefit of the people of the city of Lynn, in order that there be an increase in their commerce, welfare and prosperity and an improvement in their living conditions, that the city continue to maintain an economical and efficient water system and sewer system; that just and equitable fees, rates and charges for water and sewer service within the city be established and all consumers, public and private, taxpayer and tax exempt, pay their fair share of the costs of such services; that the water and sewer systems of the city continue to be operated in a modern, efficient and financially self-sustaining manner to further their sound financial, environmental and physical condition; that conservation of water sources be encouraged; that water supplies be protected and improved; and that the city be provided a means to improve its water and sewer systems and insure the continued availability of water and sewer services at fair but sufficient rates; all to the public benefit and good, as and to the extent and in the manner provided herein.

This act may be referred to and cited as the "Lynn Water and Sewer Reorganization Act of 1982".

SECTION 2. The following words as used in this act shall, unless the context otherwise requires, have the following meanings:

"Bonds" or "bond", bonds, notes and other obligations or evidences of indebtedness of the commission issued under the provisions of this act.

"City", the city of Lynn.

"Commission", the Lynn water and sewer commission established by section three or, if said commission shall terminate as provided in section twenty, the board, body or commission succeeding to the principal functions thereof, or whatever body, person or

ACTS, 1982. - Chap. 381.

persons to whom the powers given by this act to the commission shall be transferred by law.

"Cost", applied to any extension, improvement or enlargement of the water works system or the sewer works system or to any other project of the commission financed under the provisions of this act; all or any part of the cost of acquisition, construction, reconstruction, alteration, and remodeling of such work, including, without limiting the generality of the foregoing, costs of labor, materials, machinery and equipment, lands, structures, and all rights of any kind in real and personal property, costs of demolitions or relocations, costs of removal or relocation of any public utilities facilities, financing charges and expenses, interest prior to, during and for a period after completion of such work, reserves for debt service and other capital and current expenses, costs of architectural, engineering, financial, legal and consulting services, costs of plans, specifications, appraisals, surveys, inspections, financial and feasibility studies, expenses of organization, administration and operations prior to the commencement of and during such work, costs of equipment and supplies and advance training of operating personnel and other expenses of completing and commencing operation of such work, working capital, and other necessary or incidental expenses to the acquisition, construction, financing and placing in operation of such work.

"Current expenses", the commission's current expenses, whether or not annually recurring, of maintaining, repairing and operating the water works system and the sewer works system and any other properties of the commission, including, without limiting the generality of the foregoing, administrative, general and commercial expenses, rents, wages, salaries, retirement system payments and other employee benefits, engineering expenses for maintenance, operation and repairs, legal, financial and auditing expenses, insurance and surety bond premiums, fees and expenses of trustees and paying agents, payments to others for services rendered to the commission, taxes which may be lawfully imposed upon the commission or its income or operations or the property under its control, and other current expenses required or permitted by law to be paid by the commission, including the funding of reasonable reserves for maintenance, repair, replacements or operations.

"Revenues", all revenues, rates, fees, charges, rents and other receipts derived from the operation of the water works system and the sewer works system and all other properties of the commission, including, without limiting the generality of the foregoing, bond proceeds, proceeds of any grant or loan to the commission, investment earnings and the proceeds of insurance,

ACTS, 1982. - Chap. 381.

condemnation, sale or other disposition of properties.

"Sewer works system", the existing sewer works system in the possession of and under the jurisdiction, ownership, control and regulation of the city and its department of public works, including, without limiting the generality of the foregoing, all plants, works, instrumentalities or parts thereof, lands, easements, rights in land and water rights, rights of way, contract rights, franchises and privileges, all main, trunk, intercepting, connecting, lateral, outlet and other sewers, outfalls, storm water sewers including catch basins and surface drains, pumping and ventilating stations, disposal and treatment plants or works, structures, equipment, vehicles, appliances, and other adjuncts thereto, and any other property or interests in property, real or personal, incidental to and included in such sewer works system, and all facilities, betterments, extensions, improvements and enlargements thereto hereafter constructed or acquired.

"Water works system", the existing water supply and distribution system in the possession of and under the jurisdiction, ownership, control and regulation of the city and the department of public works thereof, including, without limiting the generality of the foregoing, all plants, works, instrumentalities or parts thereof, lands, easements, rights in land, water and flowage rights, approaches, water courses, rights of way, contract rights, franchises and privileges, all connections, dams, wells, reservoirs, water mains and pipe lines, equipment, buildings, structures, vehicles, standpipes, tanks, conduits, meters, hydrants, fire connections, fixtures, purification, filtration and treatment works and other adjuncts thereto, and any other property or interests in property, real or personal, incidental to and included in such water supply and distribution system, and all facilities, betterments, extensions, improvements and enlargements thereto and to or for the water supply therefor hereafter constructed or acquired.

SECTION 3. There is hereby created a body politic and corporate and political subdivision of the commonwealth to be known as the Lynn water and sewer commission. The commission is hereby constituted a public instrumentality and the exercise by the commission of the powers conferred by this act shall be deemed and held to be the performance of an essential public function. The commission shall not be subject to the supervision of the department of public works of the city or of any other department, commission, board, bureau or agency of the city except to the extent and in the manner provided in this act.

Except as otherwise provided in this act, the powers of the commission shall be exercised by a board of five members, each

ACTS, 1982. - Chap. 381.

of whom shall be a resident of the city. Two members shall be appointed by the mayor subject to the approval of the city council, which approval shall be deemed to have been granted if the city council shall fail to act on an appointment within forty-five days of its submission to the council by the mayor, and in the event the council shall disapprove any appointment, the mayor shall submit to the council a new appointment to be acted upon in accordance with the same procedure. Two members shall be appointed by the city council. The fifth member shall be a member of the city council elected by the city council for a term which coincides with his or her term as councillor. The members appointed by the mayor shall include one member with extensive experience in the field of administration or business. The members appointed by the city council shall include one member with extensive experience in the field of finance or accounting. Of the members first appointed by the mayor, one shall serve in office for a term expiring on June thirtieth, nineteen hundred and eighty-three, and one for a term expiring on June thirtieth, nineteen hundred and eighty-five, the term of each to be designated by the mayor at appointment. Of the members first appointed by the city council, one shall serve in office for a term expiring on June thirtieth, nineteen hundred and eighty-four, and one for a term expiring on June thirtieth, nineteen hundred and eighty-five, the term of each to be designated by the city council at appointment. Thereafter, the mayor shall appoint successors to the mayoral appointees and the city council shall appoint successors to the council appointees, and each such member shall be appointed for a term of three years or, in the case of an appointment to fill a vacancy, for the unexpired term, and until his or her successor is appointed and qualified; provided, however, that with respect to mayoral appointments, if there should exist a vacancy to which the mayor fails to make an appointment for a period of more than forty-five days, or if the mayor should fail to appoint a successor within forty-five days after the term of a member expires, the city council shall proceed to forthwith elect a member; and provided further, that with respect to council appointments should there exist a vacancy to which the city council fails to make an appointment for a period of more than forty-five days, or if the city council should fail to appoint a successor within forty-five days after the term of a member expires, the mayor shall proceed to forthwith appoint a member and such appointment shall not be subject to the approval of the city council. Any member of the commission shall be eligible for reappointment. Any appointed member of the commission may be removed at any time for cause pursuant to a preliminary notice of removal issued by the mayor or the city council

ACTS, 1982. - Chap. 381.

and a hearing of the city council in accordance with the removal procedures then in effect in the Lynn city charter. The member of the commission who is a city councillor may be removed for cause by a two-thirds vote of the city council after notice and a public hearing unless the same are in writing expressly waived. No vacancy in the membership of the commission shall impair the right of a quorum to exercise the powers of the commission. Three members of the commission shall constitute a quorum and the affirmative vote of three members shall be necessary for any action taken by vote of the commission. Any such action shall take effect immediately unless otherwise provided and need not be published or posted.

The commission shall annually elect one of its members as chairman and one of its members as vice-chairman.

The commission may establish, with the approval of the mayor and city council, a reasonable per diem compensation for its members for attendance upon the business of the commission. Such amount may be payable to each member for one day in each month and for any additional days as may be approved by the city council. In addition, each member may be reimbursed for all reasonable and necessary expenses incurred in the discharge of official duties as approved by the commission. For the purposes of chapter two hundred and sixty-eight A of the General Laws, the commission shall be deemed to be a municipal agency and the members of the commission shall be deemed to be special municipal employees.

SECTION 4. The commission shall appoint, employ and determine the compensation, duties and conditions of employment of an executive director and such other officers as the commission shall deem necessary, including a treasurer and chief engineer, who shall not be members of the commission. The executive director, treasurer and chief engineer shall be employed for initial terms of three years. If following the expiration of the initial three-year term or any subsequent term thereafter the executive director, treasurer or chief engineer is rehired in the same office, such subsequent employment shall be for a five year term, subject to removal by the commission at any time for cause but only after reasonable notice and a public hearing unless the same are in writing expressly waived. The executive director shall be the chief executive officer of the commission and shall administer and direct its affairs as authorized or approved by the commission and shall have such of the powers and perform such of the duties of the commission as the commission may from time to time have delegated to him and not recalled. The executive director or his or her designee as approved by the commis-

ACTS, 1982. - Chap. 381.

sion shall be the secretary of the commission and shall keep a record of the proceedings of the commission and shall be custodian of all books, documents and papers filed with the commission, the minute book or journal of the commission and its official seal. The executive director and any other officer designated by the commission for this purpose, each alone, may cause copies to be made of all minutes and other records and documents of the commission and may give certificates under its official seal to the effect that such copies are true copies, and all persons dealing with the commission may rely upon such certificates. Before the issuance of any bonds under the provisions of this act the executive director and any other member or officer of the commission charged with responsibility for the issuance thereof, shall each execute a surety bond in the sum of one hundred thousand dollars payable to the commission, or in lieu thereof the commission shall obtain a blanket position bond covering the executive director and any other member or officer of the commission charged with responsibility for the issuance of any bonds in the sum of one hundred thousand dollars, such surety bonds to be conditioned upon the faithful performance of the duties of their offices, to be executed by a surety company authorized to transact business in the commonwealth as surety and approved by the commission.

The commission may from time to time hire, transfer or otherwise appoint or employ legal counsel, financial advisors and such other experts, engineers, agents, accountants, clerks, and other consultants and employees as it deems necessary and determine their duties.

The commission and its members, officers and employees shall be covered by the provisions of chapter two hundred and fifty-eight of the General Laws, and for the purposes of said chapter the commission shall be considered a "public employer" and the members, officers and employees of the commission shall be considered "public employees" as defined therein. The commission may indemnify any present or past member, officer, employee or other agent against liability, costs and expenses, including legal fees, in connection with any actual or threatened proceeding, including any settlement thereof approved by counsel to the commission, arising by reason of any act or omission within the scope of his or her duties or employment for the commission; provided, however that no indemnification shall be provided, unless expressly permitted by section nine of chapter two hundred and fifty-eight of the General Laws or any other general or special law, to a person concerning a matter as to which he is finally adjudicated to have acted either without the belief held in good faith that his conduct was in the best interests of the

ACTS, 1982. - Chap. 381.

commission or with reason to understand that his conduct was unlawful. Costs and expenses may be paid prior to a final disposition upon receipt of an undertaking, which the commission may accept without regard to the financial resources of the person indemnified, that the person receiving the benefit of payments will repay such payments if he or she shall be finally adjudicated not to be entitled to indemnification hereunder. The commission may purchase insurance on behalf of itself and any of its members, officers, employees or agents against any liability arising out of his or her status as such, whether or not the commission would have the power to indemnify him or her against such liability.

The commission and its employees shall be subject to the provisions of chapter one hundred and fifty E of the General Laws, to the extent said provisions are applicable, and for purposes of said chapter, the commission shall be considered an "employer" or "public employer" as defined therein. The commission may designate a representative to act in its interest in dealing with employees of the commission and the term "legislative body" as used in chapter one hundred and fifty E of the General Laws shall mean the commission.

The commission shall operate on a fiscal year commencing July first unless otherwise provided by the commission.

An officer or employee hired, transferred or otherwise appointed by the commission, other than a person transferring to or hired by the commission from employment with the city of Lynn who is not subject to a residency requirement under the Lynn city charter prior to transfer, shall be a resident of the city when hired, transferred or otherwise appointed, but this requirement may be waived by the commission for a period not to exceed twelve months to permit such establishment of residency within the city.

SECTION 5. On the date of the issuance of the notes of the commission authorized pursuant to section nine, title to the water works system and the sewer works system shall be vested in the commission and the possession of the water works system and the sewer works system shall be transferred and dedicated to the commission without any physical delivery thereof, and the commission shall thereafter own, control, operate and maintain the water works system and the sewer works system. Copies of all maps, plans, papers and records and all equipment pertaining to the design, construction, operation and affairs of the water works system and the sewer works system shall be transferred to the commission and placed in its custody and control. Notwithstanding the foregoing, no building or motor vehicle used

ACTS, 1982. - Chap. 381.

partially in the operation of the water works system or the sewer works system and partially in other operations of the city shall be transferred to the commission or otherwise included in the definition of the water works system or sewer works system hereunder unless expressly designated by the city council with the approval of the mayor for transfer to the commission by operation of this act. All orders, rules, regulations and ordinances duly promulgated by the city or the department of public works thereof pertaining to the water works system or the sewer works system shall remain in full force and effect to the extent consistent with this act until superseded, revised or rescinded by the commission. All contracts, including collective bargaining agreements and any contract between the city and the towns of Nahant and Saugus, leases and agreements, including interdepartmental agreements, of the city and its department of public works pertaining to the water works system and the sewer works system shall continue in full force and effect until their expiration dates, and all benefits and obligations thereunder, and all other rights and benefits pertaining to the water works system and the sewer works system and existing by law or ordinance in favor of the city, including, without limiting the generality of the foregoing, all rights, benefits and obligations not inconsistent with the provisions of this act which pertain to the water works system or the sewer works system and which are vested in the city by general or special law, shall be transferred to, assumed by and imposed upon the commission by operation of law. All debts, liabilities and obligations of the city pertaining to or on account of the water works system and the sewer works system, including the obligation of the city to pay the interest and principal on all bonds, notes and other evidences of indebtedness issued by the city for purposes of the water works system and the sewer works system outstanding on June thirtieth, nineteen hundred and eighty-two, shall be assumed by and imposed upon the commission; provided, however, that all liabilities of the city in tort, whether actual or contingent, pertaining to the water works system or the sewer works system and arising out of actions or events which occurred or occur prior to the transfer of the systems to the commission shall not be assumed by or imposed upon the commission but shall continue to be the liabilities of the city. Except as above provided, all actions and proceedings pending before, all actions and proceedings pending against, and all actions and proceedings begun by the city or the department of public works thereof and pertaining to the water works system or the sewer works system shall continue unabated and remain in full force and effect notwithstanding the passage of this act and the trans-

ACTS, 1982. - Chap. 381.

fer of the water works system and the sewer works system contemplated hereby and may, at the discretion of the court, commission, board or other body having jurisdiction, be completed before, against or by the commission.

On the date of the issuance of the notes of the commission authorized pursuant to section nine, all unexpended balances of moneys in accounts of, for or on behalf of the city and its department of public works, including accounts receivable, tax title accounts and the water surplus account established pursuant to chapter seven hundred and thirteen of the acts of nineteen hundred and seventy-eight, pertaining to the water works system or the sewer works system, including unexpended proceeds of, and moneys and investments, if any, held for the payment of interest and principal of, then outstanding bonds, notes and other evidences of indebtedness of the city as provided in this section, shall be deemed to be held in trust for and shall be transferred to the commission. Subsequent to such date, all moneys collected or received by the city from any source on account of the water works system and sewer works system, including all rates, fees, charges, rents and other income derived from the operation thereof regardless of the date of assessment or billing of such rates, fees, charges and rents shall be deemed to be held in trust for and shall be forthwith transferred and paid over to the commission.

From the date the commission takes possession of the water works system and the sewer works system until June thirtieth, nineteen hundred and eightythree, or at such earlier date not prior to December thirty-first, nineteen hundred and eighty-two as the commission may determine, the department of public works of the city shall at the direction of the commission continue to engage in the maintenance, repair and operation of the water works system and the sewer works system, and employees of the city whose work is related to such systems shall continue to perform their duties related to such systems; provided, however, that the city shall have no power to appoint or employ any person to, or transfer any employee to or from, any position classified under chapter thirty-one of the General Laws or any other provision of law as directly related to the work of the water works system or the sewer works system, or enter into any contracts relating to the water works system or the sewer works system, or sell or transfer any property of such systems or obligate the commission to any person or governmental entity, without the express written consent of the commission or, upon proper delegation thereof, by the executive director of the commission. The city shall bill the commission to reimburse the city for the current expenses of the city incurred in the opera-

ACTS, 1982. - Chap. 381.

tion and management of the water works system and the sewer works system during the period herein provided; provided that the total of all such current expenses charged to the commission shall not exceed four million, five hundred thousand dollars without the assent of the commission. All expenses for operation and management of the water works system and the sewer works system which are not billable to the commission under this section shall be borne by the city.

SECTION 6. On July first, nineteen hundred and eighty-three, or such earlier date not prior to December thirty-first, nineteen hundred and eighty-two as the commission shall determine, the employees in the department of public works of the city whose work is primarily related to the water works system or the sewer works system shall be transferred to the commission and become employees of the commission subject to the provisions of this act. Terms of office of such employees shall not be deemed to be interrupted by such transfer and rights, seniority, wages, salaries, hours, and working conditions of such employees, including, but only so long as such an employee holds the position which is comparable to the position in which he was classified prior to transfer rights under chapter thirty-one of the General Laws, shall be preserved in their employment by the commission, provided that after such transfer such employees shall perform their duties subject to the direction, control and supervision of the commission. The terms and conditions of employment of any other persons whom the commission may employ shall be determined by the commission, provided that the commission shall take into account and provide for continuation of seniority, vacation and sick leave rights and other benefits based on prior employment with the city for former employees of the city who enter the employment of the commission other than by transfer under the previous sentence, but all persons employed by the commission under this sentence shall not thereafter be subject to any provision of chapter thirty-one of the General Laws. Notwithstanding any provisions of any general or special law, the commission in filling vacant positions shall give preference over applicants who are not employees of the commission to any person who is either an employee of the city department of public works or a former employee of the city laid off on or after June first, nineteen hundred and eighty-one for lack of funds who applies for the vacant position unless the commission determines in its sole discretion that such applicant is not qualified for the position.

All employees of the commission shall become members of a new retirement system to be referred to as the Lynn water and sewer

ACTS, 1982. - Chap. 381.

commission retirement system, which shall be a separate system from the city of Lynn contributory retirement system and shall be established and maintained in accordance with sections one to twenty-eight of chapter thirty-two of the General Laws and for all purposes thereunder shall be deemed to be a city contributory retirement system governed by the provisions thereof except as otherwise expressly provided herein. The Lynn water and sewer commission retirement system shall become effective without further acceptance by the commission on the date when employees are transferred to the commission pursuant to section six hereof. The Lynn water and sewer commission retirement system shall, at the discretion of the commission, be administered either by the board administering the city of Lynn contributory retirement system, in which case members in or retired from service of the Lynn water and sewer commission retirement system shall be entitled to vote for election of the elected member of the city of Lynn contributory retirement system as if they were members in or retired from service of the city of Lynn contributory retirement system, or by a separate board established by the commission which shall have the general powers and duties set forth in subdivisions four and five of section twenty of chapter thirty-two of the General Laws; provided, however, that the treasurer of the commission shall be the member ex officio of the board and the commission shall exercise those duties and powers conferred in subdivision four on a mayor and city council of a city. Whenever a person who is a member of the city of Lynn retirement system shall become a member of the Lynn water and sewer commission retirement system on account of employment by the commission, that employee shall be entitled to all creditable service and all rights and benefits to which he or she was entitled as a member of the city of Lynn contributory retirement system. Within ninety days of such employment, the amount of the accumulated total deductions, including accumulated interest on such deductions, credited to such employee's account in the city of Lynn contributory retirement system shall be transferred and credited to the annuity savings fund of the Lynn water and sewer commission retirement system. Anything to the contrary in section twenty-two of chapter thirty-two of the General Laws notwithstanding, the amount appropriated for any fiscal year beginning on and after July first, nineteen hundred and eighty-three for the pension fund of the Lynn water and sewer commission retirement system as described in subparagraph (3) of said section twenty-two shall include the amount required to fund on an accrual basis the pension benefits earned by commission employees during that year plus the amount necessary to amortize the unfunded actuarial liability of such system over such

ACTS, 1982. - Chap. 381.

period of years not exceeding forty, as the commission shall determine with the advice of an actuary. The amounts to be paid for the funds of the Lynn water and sewer commission retirement system for any such fiscal year shall be certified by the administering board to the commission and the amounts so certified shall be included by appropriate items in the commission budgets in such manner as the commission shall determine. Nothing in this act shall be deemed to repeal, decrease, abridge or in any way change the annuities, pensions, retirement allowances, refunds or accumulated total deductions or any right or benefit to which a person transferred to the Lynn water and sewer commission retirement system pursuant to this act would have been entitled had he or she remained a member of the city of Lynn contributory retirement system.

The commission shall be deemed a political subdivision for purposes of chapter thirty-two B of the General Laws. The commission and the city may enter into such arrangements as they deem suitable for provision of insurance benefits jointly for employees of the commission and employees of the city under said chapter thirty-two B.

No member, officer, employee or agent of the commission acting in the discharge of his duties for the commission shall be subject to paragraph (c) of section seventeen or section eighteen of chapter two hundred and sixty-eight A of the General Laws in connection with any particular matter in which the city is a party or has a direct and substantial interest. A municipal employee of the city may participate in matters concerning the commission notwithstanding that he is negotiating or has an arrangement concerning prospective employment with the commission, notwithstanding paragraph (a) of section nineteen of said chapter two hundred and sixty-eight A. No member, officer, employee or agent of the commission shall be subject to said paragraph (a) of said section nineteen of said chapter two hundred and sixty-eight A, with respect to any particular matter in which his interest or that of his immediate family is shared with a substantial segment of the population of the city. The city solicitor of the city shall, upon written request from a current, former, or prospective member, officer, employee or agent of the commission who is or may be subject to sections two, three, eight, seventeen to twenty, inclusive, twenty-one A, twenty-one B and twenty-three of said chapter two hundred and sixty-eight A render advisory opinions on the requirements of said sections in accordance with procedures established by section twenty-two of said chapter two hundred and sixty-eight A.

SECTION 7. The commission shall have all the rights and

ACTS. 1982. - Chap. 381.

powers necessary or convenient to carry out and effectuate this act, including, but without limiting the generality of the foregoing, the rights and powers:

(a) to adopt by-laws for the regulation of its affairs and the conduct of its business, to promulgate rules, regulations and procedures in connection with the performance of its functions and duties and to fix, enforce and collect penalties for the violation thereof;

(b) to adopt an official seal and alter the same at pleasure;

(c) to maintain an office at such place or places as it may determine;

(d) to apply for, receive, accept, administer, expend and comply with the conditions, obligations and requirements respecting any grant, gift, loan, including without limitation any grant, gift or loan from agencies of local, state and federal governments, donation or appropriation of any property or money in aid of the purposes of the commission and to accept contributions of money, property, labor or other things of value;

(e) to acquire by purchase, lease, lease-purchase, sale and lease-back, gift or devise, or to obtain options for the acquisition of, any water or water rights and any other property, real or personal, tangible or intangible, or any interest therein, in the exercise of its powers and the performance of its duties;

(f) to sell, lease, mortgage, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any water, water rights, and any other property, real or personal, tangible or intangible, or any interest therein. Notwithstanding the foregoing, any real property transferred from the city to the commission pursuant to section five of this act which is subsequently declared by the commission to be surplus property and no longer required for its operations shall not be sold or otherwise disposed of by the commission but shall be reconveyed to the city without consideration. If any such real property has been improved by the commission subsequent to the effective date of this act, the city upon reconveyance shall pay to the commission the fair market value of such improvements as determined by the commission and the city council or by an appraiser satisfactory to both;

(g) to enter onto any land to make surveys, borings, soundings and examinations thereon, provided that said commission shall make reimbursements for any injury or actual damage resulting to such lands and premises caused by any act of its authorized agents or employees and shall so far as possible restore the land to the same condition as prior to making of such surveys, borings, soundings and examinations; and to acquire by eminent domain any interest in real property within the city

ACTS, 1982. - Chap. 381.

in the name of the commission in accordance with the provisions of chapter seventy-nine and chapter eighty A of the General Laws or any alternative method provided by law; provided, however, that the commission shall not exercise the power of eminent domain without the prior approval of the city council and mayor of the city. The commission may order the removal or relocation of any surface tracks, and the removal or relocation of any conduits, pipes, wires, poles or other property located in public ways or places, or in or upon private lands, which it deems to interfere with the laying out, construction or operation of any water or sewer project, and the proper authorities shall grant new locations for any such structure so removed or relocated, and the owner thereof shall be reimbursed by the commission for the reasonable cost of such removal or relocation. Such orders, to the extent specified therein, shall be deemed a revocation of the right or license to maintain such tracks, pipes, conduits, wires, poles or other property in such public ways or places, and the private owner of any such structures in public ways or lands shall comply with such orders. If any such owner shall fail to comply with any such order of the commission relating to any such structure in public ways and places within a reasonable time, to be fixed in the order, the commission may discontinue and remove such tracks, conduits, pipes, wires, poles or other property, and may relocate the same, and the cost of such discontinuance, removal or relocation shall be repaid to the commission by the owner. No such discontinuance, removal or relocation shall entitle the owner of the property thus affected to any damages on account thereof, except for the reimbursement of cost provided for above. This section shall not apply to facilities on property of the commonwealth under the control of the department of public works or the metropolitan district commission or installed under licenses or permits granted by said department or commission, except with its approval;

(h) to purchase water in bulk or by volume and to contract for and purchase sewage disposal and treatment services from, and to sell water and provide sewage disposal and treatment services to, any person, private or public corporation or municipality, including the metropolitan district commission, the city, the commonwealth and the federal government, when necessary or convenient for the operation of the water works system or sewer works system;

(i) to construct, improve, extend, enlarge, maintain and repair the water works system and the sewer works system, and with respect to such work the commission shall be deemed to be a public agency for purposes of sections forty-four A to forty-four H, inclusive, of chapter one hundred and forty-nine of the

ACTS, 1982. - Chap. 381.

General Laws and a commission of the city for purposes of sections thirty B to thirty P, inclusive, of chapter seven of the General Laws and a public agency of the city for purposes of sections thirty-nine A to forty M, inclusive, of said chapter seven and section twenty-eight of chapter forty-three of the General Laws. The commission shall be an authority of a political subdivision of the commonwealth for purposes of sections sixty-one to sixty-two H, inclusive, of chapter thirty of the General Laws, provided that no work, project or activity of the commission the total cost of which is less than two million dollars shall be subject to the provisions of said sections sixty-one to sixty-two H, inclusive, of said chapter thirty;

(j) to pledge or assign any money, fees, charges, or other revenues of the commission and any proceeds derived by the commission from the sale of property, insurance or condemnation awards;

(k) to borrow money and incur indebtedness and issue its bonds as hereinafter provided;

(l) to make contracts of every name and nature and to execute and deliver all instruments necessary or convenient for carrying out any of its purposes;

(m) to exercise the powers and privileges of, and to be subject to limitations upon, towns and cities provided by the provisions of sections thirty-eight to forty-two I, inclusive, of chapter forty and sections one to twenty-four, inclusive, and twenty-seven to twenty-nine, inclusive, of chapter eighty-three of the General Laws, insofar as such provisions may be applicable and are consistent with the provisions of this act; provided that any requirement in said sections or chapters for a vote by the city council or other governing body of the city or for a ratification of such vote by the voters of the city, shall be satisfied by a vote or resolution duly adopted by the commission in accordance herewith, and provided that the powers of the commission to make rules and regulations and establish penalties regarding the use of sewers shall not be limited by section ten of said chapter eighty-three;

(n) to enter into contracts and agreements with the city in all matters necessary, convenient or desirable for carrying out the purposes of this act including, without limiting the generality of the foregoing, collection of revenue, data processing, and other matters of management, administration and operation;

(o) to sue and be sued and to prosecute and defend actions relating to its properties and affairs; provided property of the commission other than revenues pledged to the payment of bonds shall not be subject to attachment nor levied upon by execution or otherwise;

ACTS, 1982. - Chap. 381.

(p) to do all things necessary, convenient or desirable for carrying out the purposes of this act or the powers expressly granted or necessarily implied in this act;

(q) consistent with the constitution and laws of the commonwealth, the commission shall have such other powers, including all powers pertaining to the water works system and the sewer works system held by the city not inconsistent herewith, as may be necessary for or incident to carrying out the foregoing powers and the accomplishment of the purposes of this act, including without limitation all powers of the city granted under chapter two hundred and eighteen of the acts of eighteen hundred and seventy-one, chapter two hundred and fifty-six of the acts of eighteen hundred and eighty-three, chapter three hundred and twenty-five of the acts of eighteen hundred and ninety-eight, chapter five hundred and eight of the acts of nineteen hundred and one, chapter one hundred and fifteen of the acts of nineteen hundred and nineteen, chapter six hundred and six of the acts of nineteen hundred and sixty-eight, chapter one hundred and ninety-seven of the acts of nineteen hundred and forty-one, and all acts and parts of acts amendatory of any of the foregoing.

SECTION 8. In addition to the powers of the commission otherwise provided herein, the commission shall have the following powers and shall be subject to the following limitations:

(a) The commission is authorized and empowered to fix, revise, charge, collect and abate reasonable fees, rates, rents, assessments and other charges for water, sewer and other services, facilities and commodities furnished or supplied by it. Subject to paragraph (c), fees, rates, rents, assessments and other charges of general application shall be adopted and revised by the commission at least annually in accordance with procedures to be established by the commission for assuring that interested persons are afforded notice and an opportunity to present data, views and arguments. The commission shall hold at least one public hearing on its schedule of fees, rates and charges or any revision thereof prior to adoption, notice of which shall be delivered to the mayor and city council and be published in a newspaper of substantial circulation in the city at least one month in advance of the hearing. No later than the date of such publication the commission shall make available to the public and deliver to the mayor and council its most recent financial statement, the proposed schedule of fees, rates and charges and its proposed operating and capital budgets for its next fiscal year. The commission may provide for a schedule of reduced rates or exemptions for persons sixty-five years of age or older and for fully disabled persons. The commission may combine its

ACTS, 1982. - Chap. 381.

fees, rates and other charges for water supplied by it and sewer service provided by it in a single schedule of charges. Fees, rates, rents, assessments, abatements and other charges established by the commission shall not be subject to supervision or regulation by any department, division, commission, board, bureau, or agency of the commonwealth or any of its political subdivisions, including, without limitation, the city.

(b) Subject to paragraph (e), the fees, rates, rents, assessments and other charges established by the commission in accordance with paragraph (a) shall be so fixed and adjusted in respect of the aggregate thereof so as to provide revenues at least sufficient (i) to pay the current expenses of the commission, (ii) to pay the principal of, premium, if any, and interest on bonds or other evidences of indebtedness issued by the commission under this act as the same become due and payable, (iii) to create and maintain such reasonable reserves as may be reasonably required by any trust agreement or resolution securing bonds, (iv) to provide funds for paying the cost of all necessary repairs, replacements and renewals of the water works system and the sewer works system and (v) to pay or provide for any amounts which the commission may be obligated to pay or provide for by law or contract including any resolution or contract with or for the benefit of the holders of its bonds.

(c) Notwithstanding the requirements of paragraph (b), the fees, rents, rates and other charges for services, facilities and commodities supplied by the water works system and sewer works system in effect on the effective date of this act shall be maintained by the commission without modification until June thirtieth, nineteen hundred and eighty-three, or such earlier date not earlier than December thirty-first, nineteen hundred and eighty-two, as the commission shall determine. Upon the transfer of the water works system and sewer works system to the commission pursuant to section five, the commission shall undertake a study and examination of its fees, rents, rates and other charges and its estimated current expenses and costs of maintaining, operating and improving the systems, and shall, prior to June thirtieth, nineteen hundred and eighty-three, promulgate in accordance with paragraph (a) a schedule of fees, rents, rates and other charges sufficient thereafter to satisfy the requirements of paragraph (b). Such new schedule of fees, rates and charges shall become effective on July first, nineteen hundred and eighty-three, or such earlier date not earlier than January first, nineteen hundred and eighty-three as the commission shall determine. Such schedule shall provide for the metering of, and charging for, water and sewer service provided to all consumers in the city, excluding the city but including the commonwealth

ACTS, 1982. - Chap. 381.

and all independent agencies and authorities of the city and the commonwealth, and any exemptions from such charges provided to the commonwealth or the city under any law, general or special, are hereby declared inapplicable as of the date such schedule shall be in force.

(d) In order to provide for the collection and enforcement of its fees, rates, rents, assessments and other charges, the commission is hereby granted all the powers and privileges with respect to such collection and enforcement held by the city on the effective date of this act or as otherwise provided in this act. Without limiting the generality of the foregoing, the commission shall have benefit, without further acceptance of sections forty-two A to forty-two F, inclusive, of chapter forty of the General Laws or filing of any certificate relating thereto, of liens for unpaid fees, rates, rents, assessments and other charges as provided in sections forty-two A and forty-two B of said chapter forty and sections sixteen A and sixteen B of chapter eighty-three of the General Laws, to the extent applicable and consistent with this act. With respect to any fees, rates, rents, assessments or other charges which remain unpaid for more than six months after the same shall have come due, the commission may issue a demand in accordance with section sixteen of chapter sixty of the General Laws and may collect such fees, rates, rents, assessments and other charges by means of remedies and procedures, to the extent applicable and consistent with this act, provided in sections twenty-four to one hundred and five, inclusive, of said chapter sixty. If such demand is made within the time specified in section forty-two B of chapter forty of the General Laws and section sixteen B of chapter eighty-three of the General Laws during which liens arising thereunder remain in effect, said liens shall continue in effect for the period specified in section thirty-seven of said chapter sixty, provided that the year of assessment shall be deemed to be the year in which such demand is made. From and after the date of such demand interest shall accrue on unpaid fees, rates, rents, assessments and other charges at the rate specified in section fifty-seven of chapter fifty-nine of the General Laws. Applications for abatements in accordance with section forty-two E of said chapter forty and section sixteen E of chapter eighty-three of the General Laws shall be made within thirty days after the date of such demand. Upon written application the commission shall issue lien certificates in accordance with section twenty-three of said chapter sixty. No recordation of certificates issued by the city pursuant to said section twenty-three of said chapter sixty shall affect liens for the unpaid fees, rates, rents, assessments, and other charges of the commission. The commission shall be

ACTS, 1982. - Chap. 381.

entitled to receive fees for collection in accordance with section fifteen of said chapter sixty. For purposes of the sections of the General Laws referred to in this paragraph, the terms city, town, water district, assessors, collector, clerk, treasurer, or commissioner as used therein shall mean the commission, and the term tax or taxes shall mean the unpaid fees, rents, assessments, and other charges of the commission. The commission shall also have the powers and may exercise the remedies, to the extent consistent with this act, provided in sections twenty-nine, thirty-five and fifty and sections fifty-three to sixty-four, inclusive, of chapter sixty-two C of the General Laws and in chapter eighty and chapter eighty A of the General Laws. For purposes of said sections of said chapter sixty-two C, the terms commonwealth and commissioner used therein shall mean the commission. Notwithstanding the foregoing, except to the extent of betterments assessed by the commission, the commission shall have no power of taxation.

In addition to the other enforcement powers and remedies provided in this act, if any fees, rates, rents, assessments or other charges billed by the commission against any premises which are connected with the water works system or sewer works system remain unpaid for a period of more than sixty days from the due date thereof, and following such period notice and demand have been posted on such premises and have been given to the owner and occupant of said premises, by registered or certified mail addressed to said premises and to the address of said owner as shown on the records of the assessor of the city, to pay the same within fifteen days from the date of mailing of said notice, and such fees, rates, rents, assessments or other charges remain unpaid, the commission shall have the power and is hereby authorized to shut off the supply of water to said premises until said fees, rates, rents, assessments or other charges are paid, together with interest thereon at the applicable rate and the standard charge of the commission for restoring water service to said premises.

(e) If at the end of any fiscal year, the commission shall have realized a surplus from operations for such fiscal year, after payment or provision for all current expenses, current maintenance, repairs and replacements, current debt service on all outstanding bonds of the commission, all reserves for debt service, repairs and replacements, costs or current expenses as may be required by a trust agreement or resolution securing bonds or as may otherwise be maintained by the commission, and any and all other amounts which the commission may be obligated by law or contract to pay or provide for, the commission shall either apply such surplus in the next following fiscal year to a

ACTS, 1982. - Chap. 381.

reduction in the rates, fees, rents, assessments or other charges established by the commission for services provided by the water works system and the sewer works system or shall apply such surplus to the reduction or provision for reduction of its outstanding capital debt.

(f) On or before June first, nineteen hundred and eighty-three and annually thereafter, the commission shall prepare a proposed capital improvement program for the next three succeeding fiscal years of the commission and shall adopt a capital improvement budget for the next succeeding fiscal year. Such program and budget shall include a description of the projects proposed to be undertaken during such periods, the costs proposed to be incurred on such projects, the method of financing such costs and an estimate of the effect, if any, that such costs will have on the current or projected fees, rates, rents and other charges of the commission. The program and budget shall be annually adopted by the commission in accordance with procedures established by the commission for assuring that interested persons are afforded notice and an opportunity to present views and arguments. The commission shall hold at least one public hearing on the proposed capital improvement program and budget prior to adoption, which hearing may be combined with a hearing provided in paragraph (a) of this section, notice of which shall be delivered to the mayor and city council and be published in a newspaper of substantial circulation in the city at least one month in advance of the hearing. No later than the date of such publication the commission shall make available to the public and deliver to the mayor and city council copies of the proposed program and budget.

SECTION 9. (a) The commission is hereby authorized and empowered to provide by resolution for the issuance, at one time or from time to time prior to June thirtieth, nineteen hundred and eighty-five, of notes of the commission in the aggregate principal amount of thirty-five million dollars outstanding at any one time, excluding notes refunded by other notes issued under this paragraph, for the purpose of providing funds for (i) paying the cost of constructing or acquiring such improvements, extensions, enlargements, alterations, reconstruction or remodeling of the water works system and the sewer works system as may be authorized by such resolution, including the funding of interest payable on or before June thirtieth, nineteen hundred and eighty-five on any notes of the commission issued pursuant to section ten hereof in anticipation of federal, state or local grants for such work and (ii) providing funds for paying the current expenses of the commission to the extent not paid out of its

ACTS, 1982. - Chap. 381.

revenues or provided for in clause (i) from the effective date of this act until June thirtieth, nineteen hundred and eighty-three.

Except as otherwise provided herein, notes issued by the commission in accordance with this section shall be issued in anticipation of bonds to be issued by the commission pursuant to section ten of this act and shall be authorized, issued and sold in the same manner as, and shall otherwise be subject to section eleven and the other provisions of this act relating to, such bonds. Such notes shall mature at such time or times as provided by resolution of the commission and may be renewed from time to time, provided that all such notes and renewals thereof shall mature on or prior to June thirtieth, nineteen hundred and eighty-five.

(b) The proceeds of the notes authorized by this section shall be applied as follows:

(1) Such amount of such proceeds as may be provided in the resolution of the commission for paying the current expenses of the commission to the extent not paid out of its revenues or provided for in clause (2) from the effective date of this act until June thirtieth, nineteen hundred and eighty-three shall be deposited with a corporate trustee in accordance with section eleven and disbursed in such manner and under such restrictions as may be provided in the resolution of the commission;

(2) The balance of such proceeds shall be deposited with the trustee to be used solely for paying or providing for the cost of extensions, improvements or enlargements of the water works system and the sewer works system, including repayment of interest on notes of the commission as provided in clause (i) of paragraph (a), and shall be disbursed in such manner and under such restrictions as may be provided in the resolution of the commission.

(c) The city, acting by and through its city treasurer, shall, upon application of the commission, guarantee the principal of and interest on notes of the commission issued in accordance with this section. The city treasurer, with the approval of the mayor and without further authority, may approve the form, terms and conditions of, and may execute and deliver on behalf of the city such guaranty and any related agreements with or for the benefit of the holders of such notes containing such terms, conditions and covenants of the city as the city treasurer may deem reasonable including provision for the payment of notes not paid or refunded by the commission by application of the proceeds of the loan authorized in this paragraph and provision for the payment of such notes by the city over such period of time as the city treasurer may approve. The full faith and credit of the city shall be pledged for the guaranty provided for

ACTS, 1982. - Chap. 381.

in this section. The total principal amount of notes to be guaranteed under this section shall not exceed thirty-five million dollars in the aggregate; provided, however, that any note being refunded by the issuance of a guaranteed note shall not, and the refunding note shall, be included within such total amount. The total amount of notes permitted to be guaranteed as aforesaid shall be reduced by the outstanding principal amount of bonds issued by the commission to refund notes so guaranteed. Notes guaranteed by the city under authority of this section shall not be included in determining the limits of indebtedness of the city as established by law nor shall the principal and interest payments thereof be included in any computation under section twenty-one C of chapter fifty-nine of the General Laws. The guaranty of the city of such notes shall be executed by the city treasurer. It shall be sufficient if the signature of the city treasurer upon such notes, if any, is an engraved, printed or stamped facsimile signature, provided that he has, by writing bearing his written signature filed with the city clerk, authorized his facsimile signature to be placed thereon. The facsimile signature of the city treasurer so engraved, printed or stamped shall have the same validity and effect as his written signature. If the city treasurer shall cease to be such officer before the delivery of such notes, such signature or facsimile shall nevertheless be valid and sufficient for all purposes as if he had remained in office until such delivery.

For the purposes of determining the amount of notes or bonds issued or outstanding pursuant to this act, the amount of any notes or bonds sold by the commission at a discount shall be equal to the net proceeds thereof determined by subtracting the discount from the face amount of such notes or bonds.

If the commission shall fail or otherwise be unable to refund or pay when due any guaranteed note or notes and the interest thereon issued by the commission in accordance with this section, the treasurer of the city with the approval of the mayor and without further authority is hereby authorized and empowered, for the purpose of refunding or paying such guaranteed notes and the interest thereon, to borrow, at one time or from time to time, not exceeding in the aggregate the outstanding principal amount of and interest on such notes so guaranteed and not paid or refunded by the commission, and issue and sell bonds or notes of the city therefor, payable in not more than twenty years from their dates. Such bonds shall bear on their face the words, City of Lynn, Water and Sewer Works Loan, Act of 1982, shall be registered or with interest coupons attached, may be issued as serial bonds or term bonds or both, and may contain such provisions for the redemption of such bonds or notes prior

ACTS, 1982. - Chap. 381.

to maturity at the option of the city and at such price or prices and under such terms and conditions as the treasurer with the approval of the mayor may determine prior to the issuance of such bonds. Bonds issued from time to time by the city under the authority of this section shall not be included in determining the limit of indebtedness of the city as established by law, but shall, except as herein provided, be subject to the provisions, applicable to the city, of chapter forty-four of the General Laws, including the provisions of section seventeen of said chapter forty-four relative to temporary loans in anticipation of the issue of bonds.

SECTION 10. In addition to the notes issued under the provisions of section nine, the commission may provide by resolution for the issuance from time to time of bonds of the commission for any of its corporate purposes or the borrowing of money in anticipation of the issuance of such bonds. Bonds may be issued hereunder as general obligations of the commission or as special obligations payable solely from particular funds. Without limiting the generality of the foregoing, such bonds may be issued to pay or refund notes issued by the commission pursuant to section nine, to pay the cost of any extension, enlargement, or improvement of the water works system or the sewer works system, to provide such reserves for debt service, repairs and replacements or other costs or current expenses as may be required by a trust agreement or resolution securing bonds of the commission, or for any combination of the foregoing purposes.

The commission may also provide by resolution for the issuance from time to time of temporary notes in anticipation of the revenues to be collected or received by the commission in any year, or in anticipation of the receipt of federal, commonwealth or local grants or other aid, including the refunding or renewal of notes issued by the city in anticipation of such receipts outstanding at the effective date of this act. The issue of such notes shall be governed by the provisions of this act relating to the issue of bonds other than such temporary notes as the same may be applicable; provided, however, that notes issued in anticipation of revenues shall mature no later than one year from their respective dates and notes issued in anticipation of federal, commonwealth or local grants or other aid and renewals thereof shall mature no later than the expected date of receipt of such grants or aid. Notes in anticipation of revenues issued to mature less than one year from their dates may be renewed by the commission from time to time by the issue of other temporary notes hereunder; provided, however, the period from the date of an original note to the maturity of any note issued to renew or

ACTS, 1982. - Chap. 381.

pay the same or the interest thereon shall not exceed one year.

SECTION 11. The principal of, premium, if any, and interest on all bonds issued under the provisions of this act, unless otherwise provided herein, shall be payable solely from the funds provided therefor from revenues as herein provided. Bonds of each issue shall be dated, shall bear interest at such rate or rates, including rates variable from time to time as determined by such index, banker's loan rate or other method determined by the commission, and shall mature at such time or times, as may be determined by the commission, and may be made redeemable before maturity at the option of the commission at such price or prices and under such terms and conditions as may be fixed by the commission prior to the issue of bonds. The commission shall determine the form of bonds, including interest coupons, if any, to be attached thereto, and the matter of execution of bonds, and shall fix the denomination or denominations of bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the commonwealth. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes as if he had remained in office until after such delivery. The commission may also provide for authentication of bonds by a trustee or fiscal agent. Bonds may be issued in bearer or in registered form, or both, and, if notes, may be made payable to bearer or to order, as the commission may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of bonds registered as to both principal and interest and for the interchange of bonds registered as to both principal and interest and for the interchange of registered and coupon bonds. The commission may by resolution delegate to the executive director or any member of the commission or any combination of them the power to determine any of the matters set forth in this section including the power to award such notes to a purchaser or purchasers at public sale. The commission may sell its bonds in such manner, either at public or private sale, for such price, at such rate or rates of interest, or at such discount in lieu of interest, as it may determine will best effect the purposes of this act.

The commission may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for deli-

ACTS, 1982. - Chap. 381.

very. The commission may also provide for the replacement of any bonds which shall have become mutilated or shall have been destroyed or lost.

In the discretion of the commission, any bonds issued hereunder may be secured by a resolution of the commission or by a trust agreement between the commission and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the commonwealth, and such trust agreement shall be in such form and executed in such manner as may be determined by the commission. Such trust agreement or resolution may pledge or assign, in whole or in part, the revenues and other moneys held or to be received by the commission, including the revenues from any facilities already existing when the pledge or assignment is made, and any contract or other rights to receive the same, whether then existing or thereafter coming into existence and whether then held or thereafter acquired by the commission, and the proceeds thereof, but shall not convey or mortgage the water works system or the sewer works system. Such trust agreement or resolution may contain such provisions for protecting and enforcing the rights, security and remedies of the bondholders as may, in the discretion of the commission, be reasonable and proper and not in violation of law, including, without limiting the generality of the foregoing, provisions defining defaults and providing for remedies in the event thereof which may include the acceleration of maturities and covenants setting forth the duties of, and limitations on, the commission in relation to the acquisition, construction, improvement, enlargement, alteration, equipping, furnishing, maintenance, use, operation, repair, insurance and disposition of the water works system, the sewer works system or other property of the commission, the custody, safeguarding, investment and application of moneys, the issue of additional or refunding bonds, the fixing, revision and collection of fees, rates, rents, assessments or other charges, the use of any surplus bond proceeds, the establishment of reserves, and the making and amending of contracts.

In the discretion of the commission any bonds or notes issued under authority of this act, including notes issued under authority of section nine hereof, may be issued by the commission in the form of lines of credit or other banking arrangements and under such terms and conditions, not inconsistent with this act, and under such agreements with the purchasers or makers thereof, as the commission may determine to be in the best interests of the commission. In addition to other security provided herein or otherwise by law, bonds or notes issued by the commission under any provision of this act, including section

ACTS, 1982. - Chap. 381.

nine hereof, may be secured, in whole or in part, by letters of credit issued to the commission by any bank, trust company or other financial institution, within or without the commonwealth, and the commission may pledge or assign any of its revenues as security for the reimbursement by the commission to the issuers of such letters of credit of any payments made under the letters of credit.

It shall be lawful for any bank or trust company to act as a depository or trustee of the proceeds of bonds, revenues or other moneys under any such trust agreement or resolution and to furnish such indemnification or to pledge such securities and issue such letters of credit as may be required by the commission. Any such trust agreement or resolution may set forth the rights and remedies of bondholders and of the trustee and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the commission may deem reasonable and proper for the security of bondholders. Any pledge of revenues or other property made by the commission under this act shall be valid and binding and shall be deemed continuously perfected for the purposes of chapter one hundred and six of the General Laws from the time when the pledge is made; the revenues, moneys, rights and proceeds so pledged and then held or thereafter acquired or received by the commission shall immediately be subject to the lien of such pledge without any physical delivery or segregation thereof or further act; and the lien of any such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the commission, irrespective of whether such parties have notice thereof. Neither the resolution, any trust agreement nor any other agreement by which a pledge is created need be filed or recorded except in the records of the commission, and no filing need be made under the provisions of chapter one hundred and six of the General Laws.

Any holder of a bond issued by the commission under the provisions of this act or of any of the coupons appertaining thereto and any trustee under a trust agreement or resolution securing the same, except to the extent the rights herein given may be restricted by such trust agreement or resolution, may bring suit upon the bonds or coupons and may, either at law or in equity, by suit, action, mandamus, or other proceedings for legal or equitable relief, including proceedings for the appointment of a receiver to take possession and control of the business and properties of the commission, to operate and maintain the same, to make any necessary repairs, renewals and replacements in respect thereof and to fix, revise and collect fees and

ACTS, 1982. - Chap. 381.

charges, protect and enforce any and all rights under the laws of the commonwealth or granted hereunder or under such trust agreement, resolution or other agreement, and may enforce and compel the performance of all duties required by this act or by such trust agreement or resolution to be performed by the commission or by any officer thereof.

SECTION 12. The commission may issue refunding bonds for the purpose of paying any of its bonds at maturity or upon acceleration or redemption. Refunding bonds may be issued at such time or times prior to the maturity or redemption of the refunded bonds as the commission deems to be in the public interest. Refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of such bonds, the expenses of issue of refunding bonds, the expenses of redeeming bonds being refunded and such reserves for debt service or other capital or current expenses from the proceeds of such refunding bonds as may be required by a trust agreement or resolution securing bonds. The issue of refunding bonds, the maturities and other details thereof, the security therefor, the rights of the holders thereof, and the rights, duties and obligations of the commission in respect of the same shall be governed by the provisions of this act relating to the issue of bonds other than refunding bonds insofar as the same may be applicable.

SECTION 13. Bonds, notes and other evidences of indebtedness issued or entered into under the provisions of this act shall not be deemed to be a debt or a pledge of the faith and credit of the commonwealth or, excepting any note guaranteed by the city pursuant to section nine, of any city or town, but shall be payable solely from the revenues of the commission. All bonds, notes and other evidences of indebtedness, excepting any note guaranteed by the city pursuant to section nine of this act, shall contain on the face thereof a statement to the effect that neither the commonwealth nor any city or town shall be obligated to pay the same and that neither the faith and credit nor the taxing power of the commonwealth or of any city or town is pledged to the payment of the principal of or interest on such bonds or notes. Each bond shall also recite whether it is a general obligation of the commission or a special obligation thereof payable solely from particular funds pledged to its payment.

SECTION 14. All moneys received pursuant to the provisions of this act, whether as proceeds from the issue of bonds or as

ACTS, 1982. - Chap. 381.

revenues or otherwise, shall be deemed to be trust funds to be held and applied solely as provided in this act.

SECTION 15. Bonds issued under the provisions of this act are hereby made securities in which all public officers and public bodies of the commonwealth and its political subdivisions, all insurance companies, trust companies in their commercial departments, savings banks, co-operative banks, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the commonwealth for any purpose for which the deposit of bonds or obligations of the commonwealth is now or may hereafter be authorized by law.

SECTION 16. Notwithstanding any of the provisions of this act or any recitals in any bonds issued under this act, all such bonds shall be deemed to be investment securities under chapter one hundred and six of the General Laws.

SECTION 17. Bonds may be issued under this act without obtaining the consent of the emergency finance board established under the provisions of chapter forty-nine of the acts of nineteen hundred and thirty-three or of any department, division, commission, board, bureau or agency of the commonwealth or the city, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required therefor by this act, and the validity of and security for any bonds issued by the commission shall not be affected by the existence or non-existence of any such consent or other proceedings, conditions or things.

SECTION 18. The commission and all its revenues, income and real and personal property shall be exempt from taxation and from betterments and special assessments and the commission shall not be required to pay any tax, excise or assessment to or for the commonwealth or any of its political subdivisions; provided, however, that the commission is authorized and directed to enter into agreements to make annual payments in lieu of taxes with respect to property of the commission located outside the city upon which local real estate taxes are being paid as of the effective date of this act. Bonds issued by the commission and their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be exempt from

ACTS, 1982. - Chap. 381.

taxation within the commonwealth.

SECTION 19. The commission shall at all times keep full and accurate accounts of its receipts, expenditures, disbursements, assets and liabilities, which shall be open to inspection by any officer or duly appointed agent of the commonwealth or the city. The commission shall submit an annual report in writing concerning its operations to the mayor and city council of the city within one hundred and twenty days following the close of its fiscal year. Such report for the fiscal year ending June thirtieth, nineteen hundred and eighty-three, and for each fiscal year thereafter, shall include financial statements relating to the operations and properties of the commission maintained in accordance with generally accepted accounting principles to the extent applicable and audited by an independent certified public accountant or firm of certified public accountants.

SECTION 20. Upon termination or dissolution of the commission, the title to all funds and other properties owned by it which remain after payment or the making of provision for payment of all bonds and other obligations of the commission shall vest in the city. Notwithstanding the foregoing, if the commission shall fail on or before June thirtieth, nineteen hundred and eighty-five to pay or refund or provide for the payment of all notes and the interest thereon issued by the commission and guaranteed by the city pursuant to section nine, the commission shall thereupon terminate and be dissolved, and all funds, properties, assets and liabilities owned or controlled by it on such date and all rights, benefits and obligations to which the commission shall then be subject, shall immediately vest in, be assumed by, and be reinstated in the city by operation of law; provided, however, that if upon any such termination or dissolution any bonds or notes of the commission shall be outstanding, such bonds or notes, unless guaranteed by the city under section nine of this act, shall continue to be payable solely from the revenues and other property pledged therefor and shall not be or become a debt or obligation of the city except to the extent of such pledge.

No law affecting the powers, rights, duties, or obligations of the commission shall be effective unless it shall apply to water and sewer districts generally or shall have been approved under the provisions of Article 2 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

SECTION 21. Except as otherwise provided herein, upon title to the water works system and the sewer works system becoming

ACTS, 1982. - Chap. 381.

vested in the commission under the provisions of section five of this act, any provisions of any special laws and parts of special laws and all ordinances and parts of ordinances pertaining to the water works system or the sewer works system which are inconsistent with the provisions of this act shall be inoperative and cease to be effective. Chapter one hundred and seventy-three of the acts of nineteen hundred and seventy-eight establishing a water surplus account is hereby repealed.

SECTION 22. The provisions of this act shall be deemed to provide an exclusive, additional, alternative and complete method for the doing of the things authorized hereby and shall be deemed and construed to be supplemental and additional to, and not in derogation of, powers conferred upon the commission by law; provided, however, that insofar as the provisions of this act are inconsistent with the provisions of any general or special law, administrative order or regulation, or the Lynn city charter, the provisions of this act shall be controlling. Without limiting the generality of the foregoing, no provision of the Lynn city charter requiring the ratification by the voters of certain bond issues shall apply to the issuance of bonds of the commission pursuant to this act or to the guaranty of the city or the bonds of the city authorized by section nine.

SECTION 23. The city of Lynn may establish a department of public works, under the direction and control of a commissioner of public works which shall have all the powers, duties, responsibilities and functions now and from time to time vested by general or special law in the following: a sanitary department, a street department and an engineering department.

SECTION 24. This act, being necessary for the welfare of the city and its inhabitants, shall be liberally construed to effect the purposes hereof.

SECTION 25. The provisions of this act are severable, and if any provision hereof shall be held invalid in any circumstances, such invalidity shall not affect any other provisions or circumstances. This act shall be construed in all respects so as to meet all constitutional requirements. In carrying out the purposes and provisions of this act, all steps shall be taken which are necessary to meet constitutional requirements whether or not such steps are required by statute.

SECTION 26. This act shall take effect upon its passage.

Approved August 30, 1982.