

**LAWS**  
**OF THE**  
**STATE OF NEW YORK**  
**PASSED AT THE**  
**TWO HUNDRED AND EIGHTH**  
**SESSION**  
**OF THE**  
**LEGISLATURE**

**CONVENED JANUARY 9, 1985 AND**  
**EXPIRED DECEMBER 31, 1985**

**ALSO**

**THE EXTRAORDINARY SESSION**  
**CONVENED AND ADJOURNED**  
**DECEMBER 10, 1985**

**AT THE CITY OF ALBANY**

**ALSO OTHER MATTERS REQUIRED BY LAW**  
**TO BE PUBLISHED WITH THE SESSION LAWS**

**VOLUME II**



**PREPARED BY**  
**THE NEW YORK STATE**  
**LEGISLATIVE BILL DRAFTING COMMISSION**

*business enterprises or equal employment opportunity, which may effectuate the requirements of this section. If the authority determines that by virtue of the imposition of the requirements of any such law, in respect to contracts affected by this section, that the provisions thereof duplicate or conflict with such law, the authority shall waive the applicability of this section to the extent of such duplication or conflict.*

*5. In order to implement the requirements and objectives of this section, the authority shall be responsible for monitoring the contractors' compliance with the provisions hereof, for advising contractors on the availability of competing qualified minority business enterprises to perform contracts proposed to be awarded and for making recommendations to contractors to improve the access of minority business enterprises to such contracts.*

*§ 1197-r. Separability clause. If any section, clause or provision in this title shall be held by a competent court to be unconstitutional or ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective, it shall be valid and effective, and no other section, clause or provision shall on account thereof be deemed invalid or ineffective.*

*§ 1197-s. Effect of inconsistent provisions. Insofar as the provisions of this title are inconsistent with the provisions of any other law, general, special or local or of any charter or any local ordinance or resolution of any municipality the provisions of this title shall be controlling, provided that nothing contained in this section shall be held to supplement or otherwise expand the powers or duties of the authority otherwise set forth in this title. Nothing contained in this title shall be held to alter or abridge the powers and duties of the department of environmental conservation or the department of health.*

*§ 3. Title seven-A of article five of such law is repealed.*

*§ 4. This act shall take effect immediately.*

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## CHAPTER 796

AN ACT to amend the public authorities law, in relation to financing various public improvements within the state by creating the Buffalo municipal water finance authority and allowing for the creation of a water board; providing for their powers and duties and other matters in connection therewith

Became a law August 1, 1985, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

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

Section 1. Findings and declaration of purpose. It is hereby found and declared that the maintenance of water supply systems and the development of new sources of supply in and for the city of Buffalo is required to protect public health, promote conservation of scarce natural resources and stimulate economic growth. Such objectives are hereby declared to be matters of serious concern to the people of the city and cooperation by the state and the city of Buffalo are hereby authorized.

It is hereby found and declared that alternative financing methods must be made available to the city of Buffalo to ensure that adequate, dependable sources of capital are available for the full implementation of the city's capital program to maintain, expand and rebuild its infrastructure, and to prevent the market for city general obligation debt from becoming saturated in the near future if the city were forced to fully finance its capital program with general obligation borrowing. Such an outcome would raise the city's borrowing costs and possibly require a slow-down or more serious disruption in the city's capital program itself.

It is further found that alternative financing methods which, according to the provisions of the state constitution, must be approved by the legislature, can be used to directly provide the capital necessary to maintain the city's water in an adequate condition so that they continue

to provide vital water service to the public. The maintenance of such service is declared to be a state as well as a local concern.

It is further found that one such alternative method, the issuance of municipal securities secured by local user fees for the use or services of any self-sufficient water system, or other revenues, has been favorably received by investors even during periods when market conditions restrict the sale of municipal general obligations. Such an alternative method is currently in use in many of the nation's largest cities with which the city of Buffalo must compete for public credit. The problems of the cost and availability of capital make necessary the creation of a new, single-purpose entity to assist such city in financing water system improvements through the issuance of such securities.

It is hereby found and declared that facilitating the financing of water projects is in the public interest and involves the exercise of public and essential government functions which may include appropriate and reasonable limitations on competition and which must be performed by an instrumentality authorized herein to accomplish the purposes of this act.

§ 2. Article five of the public authorities law is amended by adding a new title two-B to read as follows:

#### TITLE 2-B

##### BUFFALO MUNICIPAL WATER FINANCE AUTHORITY

- Section 1048-a. *Short title.*  
 1048-b. *Definitions.*  
 1048-c. *Buffalo municipal water finance authority.*  
 1048-d. *General powers of the authority.*  
 1048-e. *Approval of water projects.*  
 1048-f. *Water board.*  
 1048-g. *General powers of the water board.*  
 1048-h. *Transfer of water systems by the city to the water board.*  
 1048-i. *Agreement among the water board, the city and the authority for the provision of water projects.*  
 1048-j. *Imposition and disposition of water fees, rates, rents or charges.*  
 1048-k. *Tax exemption of the water board property and activities.*  
 1048-l. *Pledge effective without filing or recording.*  
 1048-m. *Governmental capacity of the authority, the water board and the city.*  
 1048-n. *Transfer of officers and employees to and from city and state agencies.*  
 1048-o. *Bonds of the authority.*  
 1048-p. *Remedies of bondholders.*  
 1048-q. *State, city and water board not liable on authority bonds.*  
 1048-r. *Moneys of the authority.*  
 1048-s. *Bonds legal investment for fiduciaries.*  
 1048-t. *Agreement with the state.*  
 1048-u. *Exemption from taxes, assessments and certain fees; payments in lieu of taxes.*  
 1048-v. *Actions against authority and water board.*  
 1048-w. *Interest in contracts prohibited.*  
 1048-x. *Authority, water board and city to take affirmative action.*  
 1048-y. *Audit and annual report.*  
 1048-z. *Limited liability.*  
 1048-aa. *Separability clause.*  
 1048-bb. *Effect of inconsistent provisions.*

§ 1048-a. *Short title.* This title shall be known and may be cited as the "Buffalo municipal water finance authority act".

§ 1048-b. *Definitions.* As used or referred to in this title, unless a different meaning clearly appears from the context:

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

1. "Authority" shall mean the public benefit corporation created by section one thousand forty-eight-c of this title, known as the Buffalo municipal water finance authority.

2. "Bonds" shall mean bonds, notes or other evidences of indebtedness issued by the authority pursuant to this title and the provisions of this title relating to bonds and bondholders shall apply with equal force and effect to notes and noteholders, respectively, unless the context otherwise clearly requires.

3. "City" shall mean the city of Buffalo.

4. "Common council" or "council" shall mean the common council of the city of Buffalo.

5. "Comptroller" shall mean the comptroller of the city.

6. "Construction" shall mean the acquisition, erection, building, alteration, improvement, increase, enlargement, extension, reconstruction, renovation or rehabilitation of a water system or water project as defined herein; the inspection and supervision thereof; and the engineering, architectural, legal, fiscal and economic and environmental investigations and studies, surveys, designs, plans, working drawings, specifications, procedures and other actions incidental thereto and claims arising therefrom.

7. "Contracting agency" shall mean any municipality, agency, authority or board, state agency, public authority or public benefit corporation authorized to award contracts for design, construction, services or materials for water projects authorized by this title.

8. "Cost", as applied to any water project, shall include the cost of construction, the cost of the acquisition of all property, including both real, personal and mixed, the cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of all systems, facilities, machinery, apparatus and equipment, financing charges, interest prior to, during and after construction to the extent not paid or provided for from revenues or other sources, the cost of engineering and architectural surveys, plans and specifications, the cost of consultants' and legal services, the cost of lease guarantee or bond insurance, other expenses necessary, reasonably related or incidental to the construction of such water project and the financing of the construction thereof, including the amount authorized in the resolution of the authority providing for the issuance of bonds to be paid into any reserve or other special fund from the proceeds of such bonds and the financing of the placing of any water project in operation, including reimbursement to any municipality, state agency, the state, the United States government, or any other person for expenditures that would be costs of the water project hereunder.

9. "Mayor" shall mean the mayor of the city of Buffalo.

10. "Municipal bond" shall mean a bond, note or other evidence of indebtedness lawfully issued by the city pursuant to the local finance law or any other law applicable thereto.

11. "Person" shall mean any person, firm, partnership, association, or corporation organized or existing under the laws of the state or any other state, exclusive of public corporations as defined pursuant to article two-A of the general construction law.

12. "Real property" shall mean lands, structures, franchises and interests in land, waters, lands under water, groundwater riparian rights and air rights and any and all things and rights included within said term and includes not only fees simple absolute, but also any and all lesser interests including, but not limited to, easements, rights of way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or rights, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise.

13. "State" shall mean the state of New York.

14. "State agency" shall mean any state office, department, board, commission, bureau or division, or other agency or instrumentality of the state.

15. "System revenues" shall mean rents, fees, charges, payments and other income and receipts derived from users of a water system of the city or the water board including, without limiting the generality of the foregoing, investment proceeds and proceeds of insurance, condemnation, sale or other disposition of any part thereof, together with all federal or state aid therefor.

16. "Water board" shall mean the water board created by a special act of the state legislature, for the city as a body corporate and politic,

constituting a public benefit corporation, and having the powers and duties as provided in this title.

17. "Water facility" or "water facilities" shall mean any plants, structures and other real and personal property acquired, rehabilitated, or constructed or planned for the purpose of supplying, distributing or treating water, including but not limited to surface or groundwater reservoirs, basins, dams, canals, aqueducts, standpipes, conduits, pipelines, mains, pumping stations, water distribution systems, compensating reservoirs, intake stations, water-works or sources of water supply, wells, purification or filtration plants or other treatment plants and works, connections, water meters, rights of flowage or division and other plants, structures, equipment, conveyances, real or personal property or rights therein and appurtenances thereto necessary or useful and convenient for the accumulation, supply, treatment or distribution of water.

18. "Water project" shall mean any water facility including the planning, development, financing or construction thereof.

19. "Water system" shall mean the water supply and distribution system or systems owned by, in the possession of the city or the water board or under the jurisdiction, control and regulation of the city, including all additions, increases, enlargements, extensions or improvements thereto.

§ 1048-c. Buffalo municipal water finance authority. 1. A corporation known as the Buffalo municipal water finance authority is hereby created for public purposes and charged with the duties and having the powers provided in this title. The authority shall be a body corporate and politic constituting a public benefit corporation. It shall be administered by a board of directors consisting of seven members as follows: the commissioner of public works of the city, the state commissioner of environmental conservation, the chairperson of the finance committee of the common council of the city, the commissioner of administration and finance of the city, two public members to be appointed by the mayor and confirmed by the common council of the city, and one public member to be appointed by the governor. One public member appointed by the mayor shall serve for a term of one year, one public member appointed by the mayor shall serve for a term of two years, and the public member appointed by the governor shall serve for a term of two years from January first next succeeding the date of their appointment. Their successors shall serve for terms of two years each. Members shall continue in office until their successors have been appointed and qualified. The mayor or the governor shall fill any vacancy which may occur by reason of death, resignation or otherwise in a manner consistent with the original appointment. A public member may be removed by the mayor or the governor, whichever appointed him, for cause, but not without an opportunity to be heard in person or by counsel, in his defense, upon not less than ten days' notice. The board of directors shall select a chairman from among the directors who shall serve in such capacity at the pleasure of the board. The chairman shall preside over all meetings of the board of directors and shall have such other duties as may be prescribed by the board.

2. Each director who is a public member shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of his official duties and a per diem allowance of one hundred fifty dollars when rendering service as such director, provided that the aggregate of such per diem allowance to any one director in any one fiscal year of the authority shall not exceed the sum of five thousand dollars.

3. Such public members may engage in private employment, or in a profession or business, subject to the limitations contained in chapter VIII sections ninety through ninety-two of the Buffalo city ordinances for members appointed by the mayor, and subject to sections seventy-three and seventy-four of the public officers law, for the members appointed by the governor. The authority shall, for the purposes of such sections be a "city agency" or a "state agency", as the case may be and such directors shall be "officers" of the authority for purposes of such sections.

4. Four directors of the authority of whom at least three members shall be ex officio shall constitute a quorum for the transaction of any business or the exercise of any power of the authority. Resolutions

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authorizing the issuance of bonds or notes of the authority and resolutions authorizing any loan, lease, sale or other agreement in respect to a water project shall be approved by not less than four members of the authority at a meeting duly called for such purposes at which a quorum is in attendance, but for the transaction of any other business or the performance of any other power or function of the authority, the authority may act by a majority of the members present at any meeting at which a quorum is in attendance. The authority may delegate to one or more of its directors, or its officers, agents and employees, such powers and duties as it may deem proper. The comptroller shall be the chief fiscal officer of the authority. The commissioner of public works of the city, the state commissioner of environmental conservation, the director of the budget of the city, and the commissioner of administration and finance of the city may each, by written instrument, filed with and approved as to form by the authority, designate a deputy or assistant in their respective departments or offices, to perform, in their absence, their respective duties under this title. The term "director" as used in this subdivision shall include such persons so designated as provided herein. The designation of such persons shall be deemed temporary only and shall not affect the civil service or retirement rights of any persons so designated.

5. Notwithstanding any inconsistent provisions of this or any other law, general, special or local, or of any charter, no officer or employee of the city or the state, shall be deemed to have forfeited or shall forfeit his office or employment or any benefits provided under the retirement and social security law by reason of his acceptance of membership on the authority, provided, however, that a director who holds such other public office or employment shall receive no additional compensation for services rendered pursuant to this title, but shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of such services.

6. The authority and its corporate existence shall continue until terminated by law, provided, however, that no such law shall take effect so long as the authority shall have bonds or other obligations outstanding unless adequate provision has been made for the payment or satisfaction thereof. Upon termination of the existence of the authority, all of the rights and properties of the authority then remaining shall pass to and vest in the city, unless otherwise provided in an agreement between the city and the authority, and except as otherwise may be specified in such law.

7. It is hereby determined and declared that the authority and the carrying out of its powers and duties are in all respects for the benefit of the people of the city and the state for the improvement of their health, welfare and prosperity and that such purposes are public purposes and that the authority is and will be performing an essential governmental function in the exercise of the powers conferred upon it by this title.

8. Nothing in this title shall be construed to obligate the state in any way in connection with the operations or obligations of the authority.

§ 1048-d. General powers of the authority. Except as otherwise limited by this title, the authority shall have power:

1. To sue and be sued;
2. To have a seal and alter the same at pleasure;
3. To borrow money and issue negotiable or non-negotiable notes, bonds or other obligations and to provide for the rights of the holders thereof;
4. To make and amend by-laws for its organization and internal management, and rules and regulations governing the exercise of its power and the fulfillment of its purposes under this title and file such by-laws with the secretary of state and clerk of the city;
5. To enter into contracts and to execute all instruments necessary or convenient or desirable for the purposes of the authority to carry out any powers expressly given it in this title;
6. To acquire, by purchase, gift, grant, transfer, contract or lease, lease as lessee, hold, and use any real or personal property or any interest therein, as the authority may deem necessary, convenient or desirable to carry out the purpose of this title provided, however, the authority may not acquire or otherwise receive real property of the city without the consent of the city and to sell, lease as lessor, transfer and dispose of any property or interests therein at any time required by it in the exercise of its powers;

7. To appoint such officers and employees as it may require for the performance of its duties, and to fix and determine their qualifications, duties and compensation, subject to the provisions of the civil service law and the rules of the civil service commission of the city, and to retain or employ counsel, auditors, engineers and private consultants for rendering professional or technical services and advice;

8. To make plans and studies necessary, convenient or desirable to the effectuation of the purposes and powers of the authority and to prepare recommendations in regard thereto;

9. To make use of existing studies, surveys, plans, data and other material in the possession of any state agency, any municipality or the water board in order to avoid duplication of effort;

10. To enter upon such lands, waters, or premises as in the judgment of the authority shall be necessary for the purpose of making surveys, soundings, borings and examinations to accomplish any purpose authorized by this title, the authority being liable only for actual damage done;

11. To conduct investigations and hearings in the furtherance of its general purposes, and in aid thereof to have access to any books, records or papers relevant thereto; and if any person whose testimony shall be required for the proper performance of the duties of the authority shall fail or refuse to aid or assist the authority in the conduct of any investigation or hearing, or to produce any relevant books, records or other papers, the authority is authorized to apply for process of subpoena, to issue out of any court of general original jurisdiction whose process can reach such person, upon due cause shown;

12. To enter into agreements with the water board and the city for the financing by the authority of water projects, as herein provided;

13. To apply for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof, or from the state or any agency or instrumentality thereof or from any other source, for any or all of the purposes specified in this chapter, and to comply, subject to the provisions of this title, with the terms and conditions thereof; and

14. To do all things necessary, convenient or desirable to carry out its purposes and for the exercise of the powers granted in this title.

§ 1048-e. Approval of water projects. The authority shall not enter into any contract or agreement with the city or the water board with respect to the financing of any water project pursuant to section one thousand forty-eight-1 of this title, unless the state commissioner of environmental conservation and the state commissioner of health shall have completed all statutory reviews and approvals with respect to such project required by law to be completed prior to the date of such contract or agreement. Nothing herein shall be construed to diminish the full authority and responsibility of each department of the state for statutory reviews and approvals.

§ 1048-f. Water board. 1. A city water board may be created by a special act of the state legislature at the request of the city, as a body corporate and politic, constituting a corporate municipal instrumentality of the state and having the powers and duties as provided in this title.

2. The water board shall consist of seven members appointed by the mayor and confirmed by the common council of the city. Terms of office of the members shall be two years except that the terms of four of the board members first appointed shall be one year. At least one member shall have experience in the science of water resource development. No member shall be a director of the authority. The mayor shall appoint a chairman from among the members of the board. All members shall continue to hold office until their successors are appointed and qualified. Vacancies shall be filled in the manner provided for original appointments. Vacancies, occurring otherwise than by expiration of term of office, shall be filled in the same manner as original appointments for the unexpired terms.

3. Each member of the water board shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of his official duties and a per diem allowance of one hundred fifty dollars when rendering service as a member; provided that the aggregate of such per diem allowance to any one member in any one fiscal year of the board shall not exceed the sum of five thousand dollars.

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4. Notwithstanding any inconsistent provision of law, general, special or local, or any city charter, no officer or employee of the city shall be deemed to have forfeited or shall forfeit his office or employment or any benefits provided under the retirement and social security law, by reason of his acceptance of membership on the water board, provided, however, that a member of the board who holds other public office or employment shall receive no additional compensation for services rendered pursuant to this title, but shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of such services.

5. The mayor may remove any member for inefficiency, neglect of duty or misconduct in office after giving such member a copy of the charges against such member and an opportunity to be heard and defended, in person or by counsel, upon not less than ten days' notice. If any member shall be so removed, the mayor shall file in the office of the clerk of the city a complete statement of charges against such member, and the mayor's findings thereon, together with a complete record of the proceedings.

6. Members of the water board, other than members holding other public office or employment, may engage in private employment, or in a profession or business, subject to the limitations contained in chapter eight section ninety-two of the Buffalo code of ordinances.

7. A majority of the members of the water board shall constitute a quorum for the transaction of any business or the exercise of any power of the board. The water board shall have power to act by the affirmative vote of not less than a majority of the members in office at any duly held meeting thereof. The water board may delegate to one or more of its members or its officers, agents and employees, such powers and duties as it may deem proper. Any member who is an officer of the city may, by written instrument, filed with and approved as to form by the board, designate another city officer to perform in his absence his duties under this title. The term "member" as used in this section shall include such persons so designated as provided herein. The designation of any such person shall be deemed temporary only and shall not affect the civil service or retirement rights of the person so designated.

8. The water board and its corporate existence shall continue so long as it shall have contractual duties or obligations outstanding and until its existence shall be terminated by law. Upon termination of the existence of the water board, all of the rights and assets of the water board then remaining shall pass to and vest in the city.

9. It is hereby determined and declared that the water board and the carrying out of its powers and duties are in all respects for the benefit of the people of the city and the state, for the improvement of their health, welfare and prosperity and that such purposes are public purposes and that the water board is and will be performing an essential governmental function in the exercise of the powers conferred upon it by this title.

§ 1048-g. General powers of the water board. Except as otherwise limited by this title, the water board shall have power:

1. To sue and be sued;
2. To have a seal and alter the same at pleasure;
3. To make and amend by-laws for its organization and internal management, and rules and regulations governing the exercise of its powers and duties and the fulfillment of its purposes under this title;
4. To establish, fix, revise, charge and collect and enforce the payment of all fees, rates, rents and other service charges for the use of, or services furnished by the water system, so as to receive revenues which, together with other revenues available to the board, if any, shall be at least sufficient at all times so that such system or systems shall be placed on a self-sustaining basis in accordance with section one thousand forty-eight-j of this title;
5. To enter into contracts and to execute all instruments necessary or convenient or desirable for the purposes of the water board to carry out any powers expressly given it in this title, provided nothing herein contained shall authorize the water board to borrow money or otherwise contract indebtedness;
6. To enter into agreements pursuant to sections one thousand forty-eight-h and one thousand forty-eight-i of this title with the authority and the city to provide a means whereby the authority shall finance the cost of constructing water projects, as described in the agreement, and the water board may agree to assume title to the water system, and to raise revenues from users through fees, rates, rents or other service



charges necessary or appropriate to secure such financing and to pay the cost of the operation, management and repair of such water system;

7. To acquire, purchase, lease as lessee, hold and use any property, real, personal or mixed, or any interest therein necessary or desirable to carry out the purposes of this title and, subject to any limitations in any agreement with the city entered into pursuant to section one thousand forty-eight-h of this title, to sell, lease as lessor, transfer or otherwise dispose of any such property or interest therein;

8. To appoint such officers and employees as it may require for the performance of its duties, and to fix and determine their qualifications, duties, and compensation, subject to the provisions of the civil service law and rules of the civil service commission of the city and to retain or employ counsel, auditors, engineers and private consultants on a contract basis or otherwise for rendering professional or technical services and advice;

9. To acquire from the city title to the water system of such city;

10. To make plans, surveys and studies necessary, convenient or desirable to the effectuation of the purposes and powers of the water board and to prepare recommendations in regard thereto;

11. To make use of existing studies, surveys, plans, data and other material in the possession of the city in order to avoid duplication of effort, and such city is hereby authorized to make the same available to the water board and otherwise to assist it in the performance of its functions;

12. With the consent of the common council of the city to use officers or employees of the city and to pay a proper portion of the compensation or costs for the services of such officers or employees;

13. To conduct investigations and hearings in the furtherance of its general purposes, and in aid thereof to have access to any books, records or papers relevant thereto; and if any person whose testimony shall be required for the proper performance of the duties of the water board shall fail or refuse to aid or assist the water board in the conduct of any investigation or hearing, or to produce any relevant books, records or other papers, the water board is authorized to apply for process of subpoena, to issue out of any court of general original jurisdiction whose process can reach such person, upon due cause shown;

14. To apply for and to accept any gifts or grants of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof, or from the state or any state agency, the city or from any other sources, for any or all of the purposes specified in this title, and to comply, subject to the provisions of this title, with the terms and conditions thereof;

15. To invest moneys not required for immediate use or disbursement, subject to such restrictions as may be imposed by any agreement with the authority, in such obligations or deposits with such banks or trust companies as it may determine and designate, provided that any such deposit with a bank or trust company shall be continuously and fully secured by direct obligations of the city, the state or the United States of America, or obligations the principal of and interest on which are guaranteed by the state or the United States of America, of a market value equal at all times to the amount of the deposit;

16. To establish and maintain such reserves, special funds and accounts, to be held in trust or otherwise, as may be required by any agreement with the authority and the city; and

17. To do all things necessary, convenient or desirable to carry out its purposes and for the exercise of the powers granted in this title.

§ 1048-h. Transfer of water systems by the city to the water board. 1. The city may, acting by resolution of the common council of the city, enter into an agreement with the water board for the transfer to the water board, for use in the exercise of its corporate powers and purposes, of the water system of the city as the same then shall be owned by the city. Any such agreement may provide for the transfer of title of such system by deed, lease or other arrangement to the water board. To the extent not inconsistent with this title, any such agreement may impose such limitations or conditions as may be agreed upon by and between the city and water board with respect to the power of the water board to sell or otherwise dispose of any property acquired by the board pursuant to such agreement, and may provide for or authorize the water board to surrender to the city, property no longer required by the water

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board for its public purposes. Notwithstanding the provisions of any general, special or local law or charter to the contrary, any action taken by the city pursuant to this subdivision shall not be subject to a permissive or mandatory referendum.

2. Any such agreement shall set forth the liabilities of the city which it is contemplated are to be paid by the water board from moneys available to it; provided, however, that such agreement does not require the water board to assume the liabilities of the city; provided further, notwithstanding the foregoing, the city shall continue to be the record owner for real estate tax purposes of any facilities located outside of its municipal boundaries.

3. Any such agreement may provide for the payment by the city to the water board from any funds of the city, of such amount as may be determined appropriate for use by the water board.

4. The city and the water board are hereby authorized and empowered to make or enter into any contracts, agreements, deeds, leases, conveyances or other instruments as may be necessary or appropriate to effectuate the purposes of this title, and they shall have power and authority to do so and to authorize the doing of all things incidental, desirable or necessary to implement the provisions of this title.

5. Notwithstanding the foregoing provisions of this section, no agreement contemplated by this section shall become effective for any purpose unless and until the same shall have been approved in writing by resolution of the authority.

6. Upon the filing by the water board with the clerk of the city and the secretary of state of a copy of the instruments or documents effectuating the transfer authorized by this section, the water board shall take possession of the water system of the city thereby transferred.

7. Any application filed or proceeding heretofore commenced in relation to the water system transferred to the water board pending with the state departments of environmental conservation or health or any other state agency or with the United States environmental protection agency or any other federal agency or instrumentality shall inure to and for the benefit of the water board and be binding upon the water board to the same extent and in the same manner as if the water board had been a party to such application or proceeding from its inception, and the water board shall be deemed a party thereto to the extent not prohibited by any federal law. Any license, approval, permit or decision heretofore or hereafter issued or granted pursuant to or as a result of any such application or proceeding shall inure to the benefit of and be binding upon the water board and shall be assigned and transferred by the city to the water board unless such assignment and transfer is prohibited by federal law.

8. The rules and regulations of the water board may provide for the discontinuance or disconnection of the supply of water by the city for non-payment of fees, rates, rents or other charges therefor imposed by the water board, provided such discontinuance or disconnection of any supply of water shall not be carried out except in the manner and upon the notice as is required of a waterworks corporation pursuant to subdivisions three-a, three-b and three-c of section eighty-nine-b and section one hundred sixteen of the public service law. A copy of all by-laws, rules and regulations and amendments thereto, duly certified by the secretary of the water board, shall be filed in the offices of the clerk of the city and the secretary of state within three months and thereafter published once in the official newspaper of the city. Violation of such rules and regulations shall subject the offending party to a civil penalty in an action brought by the water board, not exceeding one hundred dollars for each day the violation continues. Jurisdiction is hereby conferred upon the city court to hear and determine, subject to the provisions of the civil practice law and rules, any violation of such rules and regulations.

§ 1048-i. Agreement among the water board, the city and the authority for the provision of water projects. 1. The authority, the water board and the city, acting by resolution of the common council of the city, may enter into agreements for the purpose of providing for the construction and financing of a water project.

2. Any such agreements (i) shall describe in sufficient detail for reasonable identification the particular water project to be financed in whole or in part by the authority, (ii) shall describe the plan for the financing of the cost of the construction of such water project, including the amount, if any, to be provided by the water board and the source or sources thereof, (iii) shall set forth the method by which and by

whom and the terms and conditions upon which moneys provided by the authority shall be disbursed, (iv) may require, in the discretion of the authority, the payment to the authority of the proceeds of any state and federal grants available to the water board, (v) shall provide for the establishment of user fees, rates, rents and other charges and the charging and collection thereof by the water board for the use of, or services furnished, rendered or made available by such system such as to provide that such board receive revenues at least sufficient, together with other revenues of the board, if any, to meet the requirements of subdivision one of section one thousand forty-eight-j of this title, provided that revenues received by such board shall be deposited in a special fund established pursuant to this title and disbursed to, and upon certification of, the authority, (vi) may provide for the transfer by the city to the water board pursuant to section one thousand forty-eight-h of this title of ownership of the water system of which such project will form a part, (vii) shall provide for the construction and completion of such water project by the city and for the operation, maintenance and repair thereof as an integrated part of the system of which such water project forms a part, subject to such terms and conditions, not inconsistent with this title, which may be in the public interest and necessary or desirable properly and adequately to secure the holders of bonds of the authority, provided, however, all contracts for public work and all purchase contracts shall be awarded by the city as provided by law for the award of such contracts by the city and that all contracts for construction shall be let in accordance with the provisions of state law pertaining to prevailing wages, labor standards and working hours. When the entire cost of constructing a building as part of any water project shall exceed fifty thousand dollars, the city shall prepare separate specifications for the following three subdivisions of the work to be performed: (a) plumbing and gas fitting; (b) steam heating, hot water heating, ventilating and air conditioning apparatus; and (c) electric wiring and standard illuminating fixtures, (viii) shall provide for the discontinuance or disconnection of the supply of water for non-payment of fees, rates, rents or other charges therefor imposed by the water board, provided such discontinuance or disconnection of any supply of water shall not be carried out except in the manner and upon the notice as is required of a waterworks corporation pursuant to subdivisions three-a, three-b and three-c of section eighty-nine-b and section one hundred sixteen of the public service law, and (ix) in the discretion of the authority, require reports concerning the project from the water board to the authority and the city.

3. If the city executes an agreement pursuant to this section, relating to the financing of water projects by revenue bonds, it shall have and shall be deemed to have annulled its power to levy user fees, rents and other charges on participating properties or customers for the cost of financing, operating and maintaining such water projects under its jurisdiction until all bonds of the authority shall have been paid or discharged in accordance with the agreement and the resolution of the authority authorizing such bonds. If the city has outstanding general obligation bonds issued for acquiring or constructing water facilities, whether the bonds are payable from revenues, special assessments, or taxes, it may authorize the authority pursuant to the agreement to issue its revenue bonds under this title for the purpose of retiring the outstanding bonds.

4. No such agreement shall be executed until the city and water board shall have held a public hearing at which users of the water system shall have had opportunity to be heard concerning the proposed provisions thereof. Notice of such hearing shall be published at least thirty days in advance in the state register, in the official newspaper or newspapers of the city, and in at least one newspaper of general circulation in each of the areas served by the water system.

5. Such agreement shall be effective upon the issuance by the authority of notes and bonds to finance the cost of constructing water projects of the city.

6. Any such agreement may be amended, revised or extended by supplemental agreements authorized and executed in the same manner as the original agreement, provided that any such supplemental agreement shall not be inconsistent with the provisions of this title.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

7. (a) Following the execution of the agreement by and between the authority, the water board and the city pursuant to this section, the clerk of the city, shall publish a notice in substantially the following form: "Notice is hereby given that the city of Buffalo has on \_\_\_\_\_ day of \_\_\_\_\_ entered into an agreement with the Buffalo municipal water finance authority in relation to the construction and financing of (here insert a brief description of the water facility or facilities to which such agreement relates) pursuant to the Buffalo Municipal Water Finance Authority Act for the purpose of placing its water system on an independent basis, imposing fees and rents on water system users which, together with other revenues available for such purpose, if any, are sufficient to pay to the authority debt service on bonds issued by the authority pursuant to the agreement and for operation and maintenance of the facility (title to which is transferred to the water board pursuant to the agreement). Such agreement in general terms provides (here insert a brief summary of the substantive provisions of such agreement). A copy of the complete agreement is on file for public inspection in the office of the clerk of the city where the same may be examined by any interested person during regular business hours. The validity of this agreement may be hereafter contested only upon the ground or grounds that: (i) such agreement violates, or the performance of any provision thereof by any party thereto would violate, the provisions of any law or the state constitution, or (ii) the provisions of law which should have been complied with in relation to the authorization and execution were not substantially complied with, and in any event an action, suit or proceeding is commenced within sixty days after the date of this notice.

(Clerk or other official  
designated by the common council  
of the city of Buffalo)"

(b) The publication authorized by this subdivision shall be in the state register and in the official newspaper or newspapers of the city.

(c) After the expiration of the sixty day period set forth in such notice the validity of such agreement shall be conclusively presumed and the validity thereof shall not thereafter be questioned by either a party plaintiff or a party defendant and no court shall have jurisdiction in any action, suit or proceeding contesting such validity.

(d) Neither any error or omission in the notice of publication provided for in this subdivision shall affect or impair the validity of an agreement executed pursuant to this section so long as the notice substantially conforms to the provisions of this section.

§ 1048-j. Imposition and disposition of water fees, rates, rents or charges. 1. The water board shall establish, fix and revise, from time to time, fees, rates, rents or other charges for the use of, or services furnished, rendered or made available by, the water system owned by the water board pursuant to this title in such amount at least sufficient at all times so as to provide funds in an amount sufficient together with other revenues available to the board, if any, (i) to pay to the authority, in accordance with any agreement with the authority, an amount sufficient for the purpose of paying the principal of and the interest on the outstanding notes or bonds of the authority as the same shall become due and payable and maintaining or funding a capital or debt service reserve fund therefor and, to the extent requested by the city in, or annually pursuant to the agreement, to pay to the city, in accordance with the agreement, an amount sufficient for the purpose of paying the principal of and interest on general obligation bonds of the city issued for or allocable to the water system as the same shall become due and payable, and to maintain or fund reserves therefor, (ii) to pay to the city, in accordance with the agreement, an amount sufficient for the purpose of paying the costs of administering, maintaining, repairing and operating and the cost of constructing capital improvements to the water system, (iii) to pay to the city in accordance with the agreements entered into pursuant to sections one thousand forty-eight-h and one thousand forty-eight-i of this title an amount sufficient for the purpose of paying liabilities issued for or allocable to the water system as the same shall become due and payable, (iv) to meet any requirements of any agreement including requirements relating to the establishment of reserves for renewal and replacement and for uncollected charges and covenants respecting rates, (v) to pay all other reasonable and necessary expenses of the authority and the water board

in relation thereto, and (vi) to the extent requested by the city in or pursuant to the agreement, to pay or provide for such other purposes or projects as such city considers appropriate and in the public interest. Any surplus of funds remaining after such payments have been made shall be returned to the city for deposit in the general fund.

2. There is hereby established in the custody of the water board a special fund to be known as the local water fund. Such fund shall consist of the revenues derived from the fees, rates, rents and service charges established, charged and collected pursuant to this title and any other income earned or moneys received by the water board. Revenues in the local water fund shall be kept separate and shall not be commingled with any other moneys in the custody of the water board. All moneys, properties and assets acquired by the water board, whether as revenues or otherwise, shall be held by it in trust for the purposes of carrying out its powers and duties, and shall be used and reused in accordance with the purposes and provisions of this article.

The water board shall deposit promptly, to the credit of the local water fund, revenues collected under this article in a bank, banking house or trust company as may be designated in or pursuant to the agreement.

3. No such fee, rate, rent or other charge shall be established, fixed or revised unless and until the water board has held a public hearing at which the users of the water system, the owners of property served or to be served and others interested, have had an opportunity to be heard concerning the same. Notice of such public hearing shall be published by the water board at least twenty days before the date set therefor, in at least one newspaper of general circulation in the areas served by the water system. Such notice shall set forth the date, time and place of such hearing and shall include a brief description of the matters to be considered at such hearing. A copy of the notice shall be filed in the office of the clerk of the city and shall be available for inspection by the public. At all such hearings, any users of the water system, owners of property served or to be served and any other interested persons shall have an opportunity to be heard concerning the matters under consideration. Any decision of the water board on matters considered at such public hearing shall be in writing and be made available in the office of the water board for public inspection during regular office hours. Such decision shall be published in at least one newspaper of general circulation in the areas served by the water system within thirty days after such decision is made. The fees, rates, rents or other charges so established for any class of users of property served shall be extended to cover any additional premises thereafter served which are within the same class, without the necessity of a hearing thereon.

4. The fees, rates, rents or other charges established, fixed and revised from time to time by the water board shall be collected by the water board at such times and in such manner as may be determined by the rules and regulations adopted by the water board consistent with the provisions of this title.

5. Such fees, rates, rents or other charges, if not paid when due, shall constitute a lien upon the premises served and a charge against the owners thereof, which lien and charge shall bear interest at the same rate as would unpaid taxes of the city. Such lien shall take precedence over all other liens or encumbrances, except taxes, and may be foreclosed against the lot or building served in the same manner as a lien for such taxes. The amount which remains due and unpaid for sixty days may, with interest thereon at the same rate as unpaid city taxes and with reasonable attorneys' fees, be recovered by the water board in a civil action in the name of the water board against such owners. The city, and any state agency shall be subject to the same fees, rates, rents or other charges under the same conditions as other users of such water system. Any agreement for the supply of water services between the city or an agency thereof and any other municipality or water supply system, or any administrative determination by a state agency, or any other arrangement in this regard, in effect at the time the water board shall be established, shall remain in full force and effect and be binding upon the water board as if it were a party to such agreement, determination or other arrangement. All rights, powers, duties, obligations and functions provided by law with respect to the fixing of charges or rates for the supply of water services to users outside the city, in-

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cluding but not limited to those set forth in article eight of the environmental conservation law, shall be deemed to apply, as appropriate, to the water board established pursuant to this title. In addition to any other lawful enforcement methods and pursuant to rules and regulations of the water board promulgated pursuant to this title, the payment of fees, rates, rents or other charges for water service to any premises may be enforced by discontinuing the water service to such premises provided that such discontinuance or disconnection of any supply of water shall not be carried out except in the manner and upon the notice as is required of a water-works corporation pursuant to subdivisions three-a, three-b and three-c of section eighty-nine-b and section one hundred sixteen of the public service law.

6. The water board shall pay to the authority such amounts at such times and in such manner as may be provided in the agreement by and among the authority, the water board and the city consistent with the priorities set forth in such agreement. There is hereby created a lien, by this title made a statutory lien within the meaning of the uniform commercial code and any other state or federal law, upon the gross revenues of the water board, in favor of the payment of all amounts due pursuant to such agreement and in the order and priority set forth therein and which lien shall be a first lien upon such gross revenues. The gross revenues so subject to such statutory lien shall be and remain subject to such statutory lien until the payment in full of each such item in accordance with such priority. Said statutory lien shall not be construed to give any holder or owner of any bond of the authority power to compel the sale of any water system.

7. If there be any default by the water board in the making of the payments to the authority required under this section, as a result of the failure by the water board to impose sufficient fees, rates, rents or other charges, the authority may petition for the appointment by any court having jurisdiction in any proper action of a receiver to administer on behalf of the water board, under the direction of said court, the affairs of the water board in order to achieve system revenues at least sufficient to make such payments; and by and with the approval of said court, to establish, fix and revise, from time to time, fees, rates, rents or other charges at least sufficient therefor in conformity with this title, and the resolution or trust indenture of the authority providing for the issuance of its bonds and in accordance with such orders as the court shall make.

8. The water board shall prepare and transmit to the city on or before the first day of December in each year a list of those persons or property owners within such city who are in arrears in the payment of fees, rates, rents or other charges for a period of sixty days or more after the last day fixed for payment thereof without penalty. The list shall contain a brief description of the properties for which the services were provided, the names of the persons liable to pay for the same and the amounts chargeable to each, including penalties and interest computed to the next succeeding December thirty-first. The city shall levy such sums against the properties liable and shall state the amount thereof in a separate column in the annual tax rolls of such city under the name of "delinquent water charges" as may be appropriate and as may be directed by the water board. Such amounts, as and when collected by the commissioner of administration and finance of the city, shall be paid over to the water board. All of the provisions of the tax laws of the state covering the enforcement and collection of unpaid taxes of the city shall apply to the collection of such unpaid fees, rates, rents or other charges.

9. Neither the public service commission, nor any city or state agency, shall have any jurisdiction over the water board or authority or any power over the regulation of the fees, rates, rents or other charges established, fixed or revised by the water board except as provided by law with respect to the supply of water services to users outside the city.

§ 1048-k. Tax exemption of the water board property and activities. 1. It is hereby determined that the creation of a water board and the carrying out of its corporate purposes is in all respects for the benefit of the city and is a public purpose and the water board shall be regarded as performing a governmental function in the exercise of the powers conferred upon it by this title and shall not be required to pay any taxes, special ad valorem levies or special assessments upon any real property owned by it or any filing, recording or transfer fees or taxes in relation to instruments filed, recorded or transferred by it or

on its behalf. The water board shall be deemed a public authority for the purposes of section four hundred twelve of the real property tax law.

2. Notwithstanding the provisions of subdivisions one and four of this section, any real property of the water board located outside the boundaries of the city, shall be exempt from the payment of taxes, special ad valorem levies and special assessments only if and to the extent that such real property would have been exempt if owned by the city.

3. Notwithstanding any provision in this section to the contrary, the water board may pay, or may enter into agreements with any municipality to pay, a sum or sums, annually or otherwise, or to provide other considerations to such municipality, with respect to real property of the water board located within such municipality and provided that any such payment or agreement to pay shall be subject to approval by the authority.

4. The water board shall not be required to pay any taxes or other governmental fees or charges, whether imposed by the state or any municipality, including without limitation franchise taxes, sales taxes or other excise taxes, or any other tax or charge upon its property or activities or upon any of its revenues or other income.

§ 1048-l. Pledge effective without filing or recording. Any provision of the uniform commercial code to the contrary notwithstanding, any pledge of or other security interest in revenues or other personal property made or created by the authority, the water board or the city pursuant to this title shall be valid, binding and perfected against all parties having claims of any kind in tort, contract or otherwise against the authority, the water board or the city, as the case may be, irrespective of whether or not such parties have notice thereof. No instrument by which such pledge or security interest is created nor any financing statement need be recorded or filed.

§ 1048-m. Governmental capacity of the authority, the water board and the city. The authority, the water board and the city in carrying out their respective powers and duties under this title, shall be deemed to be acting in a governmental capacity and in the performance of an essential governmental function.

§ 1048-n. Transfer of officers and employees to and from city and state agencies. Officers and employees of city and state agencies may be transferred to the authority and officers and employees of the authority may be transferred to appropriate city and state agencies without examination and without loss of any civil service or retirement status or rights. Transfers shall be in accordance with section seventy of the civil service law or the rules of the civil service commission of the city, as the case may be. No such transfer shall be made except with the approval of the head of the agency involved or the director of the state division of the budget or the director of the budget of the city, as the case may be, and the chairman of the authority and in compliance with the rules and regulations of the civil service commission of the city or the state, as the case may be.

§ 1048-o. Bonds of the authority. 1. The authority shall have the power and is hereby authorized from time to time to issue bonds, in conformity with applicable provisions of the uniform commercial code, in such principal amounts as it may determine to be necessary to pay the cost of any water project or water projects, or for any other corporate purposes, including incidental expenses in connection therewith. The authority shall have power from time to time to refund any bonds by the issuance of new bonds whether the bonds to be refunded have or have not matured, and may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose. Bonds issued by the authority shall be special obligations payable solely out of particular revenues or other moneys of the authority as may be designated in the proceedings of the authority under which the bonds shall be authorized to be issued, subject to any agreements entered into between the authority and the city, and the authority, the water board and the city, and subject to any agreements with the holders of outstanding bonds pledging any particular revenues or moneys.

2. The authority is authorized to obtain from any department or agency of the United States of America or non-governmental insurer any insurance or guaranty, to the extent now or hereafter available, as to, or for the payment or repayment of interest or principal, or both, or any

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part thereof, on any bonds or notes issued by the authority, or on any municipal obligations of governmental units purchased or held by the authority; and to enter into any agreement or contract with respect to any such insurance or guaranty, except to the extent that the same would in any way impair or interfere with the ability of the authority to perform and fulfill the terms of any agreement made with the holders of the bonds or notes of the authority.

3. Whenever the authority shall determine that the issuance of its bonds is appropriate, the comptroller shall make a recommendation as to the arrangements necessary for the issuance and sale of such bonds including the underwriting of such bonds through negotiated agreement or public letting or the private sale of such bonds and such recommendation shall include compensation for services rendered as he deems appropriate. The comptroller shall recommend to the authority the price or prices, interest rate or rates, maturities and other terms and conditions for the issuance of the bonds, except that bonds and any renewal thereof shall mature within forty years of the date of their original issuance and notes and any renewal thereof shall mature within five years of the date of their original issuance. Following such recommendation, bonds shall be authorized by bond resolution of the authority which shall set forth the arrangements for the issuance of the bonds, the price or prices, the interest rate or rates, maturities, terms of redemption, form and other terms of the bonds. Such bond resolution and the minutes of the authority related thereto shall be transmitted to the comptroller for his approval or disapproval thereof. Approval of such bond resolution shall be indicated by the execution of the bond resolution by the comptroller whereupon such bond resolution shall come into full force and effect in accordance with its terms.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

8. Neither the directors of the authority nor any person executing bonds shall be liable personally thereon or be subject to any personal liability or accountability solely by reason of the issuance thereof.

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

§ 1048-p. Remedies of bondholders. Subject to any resolution or resolutions adopted pursuant to paragraph (i) of subdivision four of section one thousand forty-eight-o of this title:

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

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

(a) by action or proceeding in accordance with the civil practice law and rules, enforce all rights of the bondholders and require the authority to carry out any other agreements with the holders of such bonds and to perform its duties under this title;

(b) bring an action or proceeding upon such bonds;

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(c) by action or proceeding, require the authority to account as if it were the trustee of an express trust for the holders of such bonds;  
 (d) by action or proceeding, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds; and  
 (e) declare all such bonds due and payable, and if all defaults shall be made good, then with the consent of the holders of twenty-five per centum of the principal amount of such bonds then outstanding, annul such declaration and its consequences.

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

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

5. Before declaring the principal of bonds due and payable, the trustee shall first give thirty days' notice in writing to the authority.

§ 1048-q. State, city and water board not liable on authority bonds. Neither the state, nor the city, nor the water board nor any subdivision thereof shall be liable on the bonds of the authority and such bonds shall not be a debt of the state, the city or such water board.

§ 1048-r. Moneys of the authority. All moneys of the authority from whatever source derived shall be paid to the treasurer of the authority and shall be deposited forthwith in a bank or banks in the state designated by the authority. The moneys in such accounts shall be paid out on check of the treasurer upon requisition by the chairman of the authority or of such other officer or officers as the authority may authorize to make such requisitions. All deposits of such moneys shall be secured by obligations of or guaranteed by the United States, or of the state or of the city of a market value equal at all times to the amount on deposit and all banks and trust companies are authorized to give such security for such deposits. The authority shall have power, notwithstanding the provisions of this section, to contract with the holders of any bonds as to the custody, collection, security, investment and payment of any moneys of the authority, or any moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds. Moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of such moneys may be secured in the same manner as moneys of the authority and all banks and trust companies are authorized to give such security for such deposits.

§ 1048-s. Bonds legal investment for fiduciaries. The bonds of the authority are hereby made securities in which all public officials and bodies of the state and all municipalities, all insurance companies and associations, and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, investment companies and other persons carrying on a banking business, and administrators, guardians, executors, trustees and other fiduciaries and all other persons, whatsoever, who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. The bonds are also hereby made securities which may be deposited with and may be received by all public officers and bodies of this state and all municipalities for any purposes for which the deposit of bonds or other obligations of this state is now or hereafter may be authorized.

§ 1048-t. Agreement with the state. The state does hereby pledge to and agree with the holders of any bonds issued by the authority, pursuant to this title that the state will not alter or limit the rights hereby vested in the authority or the water board to fulfill the terms of any agreement made with or for the benefit of the holders of bonds, or in any way impair the rights and remedies of bondholders, until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with bondholders.

§ 1048-u. Exemption from taxes, assessments and certain fees; payments in lieu of taxes. 1. It is hereby determined that the creation of the authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of the city and of the state and is a public purpose and the authority shall be regarded as performing a

governmental function in the exercise of the powers conferred upon it by this title and shall not be required to pay any taxes, special ad valorem levies or special assessments upon any real property owned by it or any filing, recording or transfer fees or taxes in relation to instruments filed, recorded or transferred by it or on its behalf. The authority shall be deemed a public authority for the purposes of section four hundred twelve of the real property tax law.

2. Notwithstanding any provision in this section to the contrary, the authority may pay, or may enter into agreements with any municipality to pay, a sum or sums, annually or otherwise, or to provide other considerations to such municipality with respect to real property owned by the authority located within such municipality.

3. Any bonds issued pursuant to this title together with the income therefrom as well as the revenues, moneys and all other property and activities of the authority shall be exempt from all taxes and governmental fees or charges, whether imposed by the state or any municipality, including without limitation real estate taxes, franchise taxes, sales taxes or other excise taxes, except for transfer and estate taxes. The state hereby covenants with the purchasers and with all subsequent holders and transferees of bonds issued by the authority pursuant to this title, in consideration of the acceptance of and payment for the bonds, that the bonds of the authority issued pursuant to this title and the income therefrom and all revenues, moneys, and other property pledged to secure the payment of such bonds shall at all times be free from such taxes, except for transfer and estate taxes.

§ 1048-v. Actions against authority and water board. 1. No action or proceeding shall be prosecuted or maintained against the authority or the water board for personal injury or damage to real or personal property alleged to have been sustained by reason of the negligence or wrongful act of the authority or the board or of any member, officer, agent or employee thereof, unless (i) a notice of claim shall have been made and served upon the authority or the water board, as the case may be, within the time limit by and in compliance with section fifty-e of the general municipal law, (ii) it shall appear by and as an allegation in the complaint or moving papers that at least thirty days have elapsed since the service of such notice and that adjustment or payment thereof has been neglected or refused, and (iii) the action or proceeding shall be commenced within one year after the happening of the event upon which the claim is based.

2. Wherever a notice of claim is served upon the authority or the water board, it shall have the right to demand an examination of the claimant relative to the occurrence and extent of the injuries or damages for which claim is made, in accordance with the provisions of section fifty-h of the general municipal law.

3. The authority or the water board may require any person presenting for settlement an account or claim for any cause whatever against the authority or the water board, as the case may be, to be sworn before a member, counsel or an attorney, officer or employee thereof designated for such purpose, concerning such account or claim and when so sworn, to answer orally as to any facts relative to such account or claim. The authority or the water board shall have power to settle or adjust all claims in favor of or against the authority or the water board, as the case may be.

4. The rate of interest to be paid by the authority or the water board upon any judgment for which it is liable, other than a judgment against the authority on bonds, shall not exceed the rate of interest on judgments and accrued claims against municipal corporations as provided in the general municipal law from time to time. Interest on payments of principal or interest on any bonds in default shall accrue at the rate borne by such bonds from the due date thereof until paid or otherwise satisfied.

§ 1048-w. Interest in contracts prohibited. It shall be a misdemeanor for any member or any officer, agent, servant or employee of the authority or of the water board to be in any way or manner interested, directly or indirectly in the furnishing of work, materials, supplies or labor, or in any contract therefor which the authority or the board, as the case may be, is empowered by this title to make.

§ 1048-x. Authority, water board and city to take affirmative action. 1. Each contracting agency which awards contracts for design, construc-

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

tion, services or materials for water projects authorized by this title shall require that such contracts and documents soliciting bids or proposals therefor shall contain or make reference to the following provisions:

(a) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue programs of affirmative action to insure that minority group persons and women are afforded equal employment opportunity without discrimination. Such action shall be taken with reference, but not be limited to recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training.

(b) At the request of the contracting agency, the contractor shall request each employment agency, labor union, or authorized representative of workers with which he has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will cooperate in the implementation of the contractor's obligations hereunder.

(c) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor, in performance of the contract that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(d) The contractor will include the provisions of paragraphs (a) through (c) of this subdivision in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its working connection with a contract.

2. Each contracting agency shall establish procedures and guidelines to ensure that contractors and subcontractors undertake programs of affirmative action as required by this section. Such procedures may require, after notice in a bid solicitation, the submission of an affirmative action program prior to the award of any contract, or at any time thereafter, and may require the submission of compliance reports relating to the operation and implementation of any affirmative action program adopted hereunder. Such procedures and guidelines shall be consistent with the guidelines promulgated by the office of federal contract compliance programs of the United States department of labor pursuant to presidential executive order eleven thousand two hundred forty-six, as amended, and any state statutory or regulatory requirements. A contracting agency shall, in the promulgation of procedures and guidelines pursuant to this section, cooperate with any federal, state or local agency established for the purpose of implementing affirmative action compliance programs.

3. Any contracting agency empowered to award contracts for design, construction, services or materials shall seek meaningful participation in the performance of contracts by minority business enterprises and shall establish measures and procedures to identify those contracts and items of work for which minority business enterprises may best bid to actively and affirmatively promote and assist their participation so as to facilitate the award of a fair share of contracts to such enterprises. For purposes hereof, "minority business enterprise" shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by citizens or permanent resident aliens who are Black, Hispanic, Asian, American Indian or women, and such ownership interest is real, substantial and continuing. The provisions of this subdivision shall not be construed to limit the ability of any minority business enterprise to bid on any contract.

4. In the implementation of subdivisions two and three of this section, the contracting agency shall consider compliance by any contractor with the requirements of any federal, state or local law concerning minority business enterprises or equal employment opportunity, which may effectuate the requirements of this section. If the contracting agency determines that by virtue of the imposition of the requirements of any such law, in respect to contracts affected by this section, that the provisions thereof duplicate or conflict with such law, the contracting agency shall waive the applicability of this section to the extent of such duplication or conflict.

5. In order to implement the requirements and objectives of this section, contracting agencies shall be responsible for monitoring the contractors' compliance with the provisions hereof, for advising contractors on the availability of competing qualified minority business enterprises to perform contracts proposed to be awarded and for making recommendations to contractors to improve the access of minority business enterprises to such contracts.

§ 1048-y. Audit and annual report. The accounts of the authority and the water board shall be subject to the supervision of the city comptroller. The authority and the water board shall annually submit to the mayor, the comptroller and the director of the budget of the city a detailed report. In addition an annual audit of the authority shall be conducted by an independent certified public accountant. Such audited report shall be submitted to the mayor, the comptroller and the director of the budget of the city.

§ 1048-z. Limited liability. Neither the members of the authority nor of the water board, nor any officer or employee of the authority nor the water board acting in behalf thereof, while acting within the scope of his authority, shall be subject to any liability resulting from (i) the construction, ownership, maintenance or operation of any project financed with the assistance of the authority, (ii) the construction, ownership, maintenance or operation of any water system or facility owned by the water board, or (iii) carrying out any of the powers expressly given in this title. A director, officer or employee of the authority shall be deemed an "employee" for the purposes of chapter three of section seventy-nine of the Buffalo city ordinances, provided however that any director, either appointed by the governor or an employee of the state shall be deemed an "employee" for the purposes of section eighteen of the public officers law for any action relating to their activities as a director of the authority created by this title.

§ 1048-aa. Separability clause. If any section, clause or provision in this title shall be held by a competent court to be unconstitutional or ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective, it shall be valid and effective, and no other section, clause or provision shall on account thereof be deemed invalid or ineffective.

§ 1048-bb. Effect of inconsistent provisions. Insofar as the provisions of this title are inconsistent with the provisions of any other law, general, special or local or of the city charter or any local law, ordinance or resolution of the city, the provisions of this title shall be controlling, provided that nothing contained in this section shall be held to supplement or otherwise expand the powers or duties of the authority otherwise set forth in this title. Nothing contained in this title shall be held to alter or abridge the powers and duties of the state department of environmental conservation or the state department of health.

§ 3. This act shall take effect upon the enactment of the special act referred to in section one thousand forty-eight-f of title two-B of article five of the public authorities law, as added by section two of this act.

## CHAPTER 797

AN ACT authorizing and empowering the town of Hempstead to adopt a local law for the management of solid waste generated within such town

Became a law August 1, 1985, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

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

Section 1. Notwithstanding the provisions of any general, special or local law to the contrary, the town of Hempstead is authorized to adopt and amend a local law to be known as the solid waste management law. Such law shall provide for the management on a town-wide basis of all solid waste generated within the town of Hempstead. Such law shall also

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.