

**LAWS**  
OF THE  
**STATE OF NEW YORK**

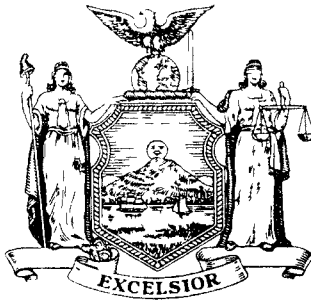
PASSED AT THE  
TWO HUNDRED AND TWENTY-FIFTH  
SESSION  
OF THE

**LEGISLATURE**

CONVENED JANUARY 9, 2002 AND  
EXPIRED DECEMBER 31, 2002  
AT THE CITY OF ALBANY

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

**VOLUME I**



PREPARED BY  
THE NEW YORK STATE  
LEGISLATIVE BILL DRAFTING COMMISSION

**CHAPTER 274**

AN ACT to authorize the Southern Baptist Church to file an application for a real property tax exemption

Became a law July 30, 2002, 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 any other provision of law to the contrary, the commissioner of the New York City Department of Finance is hereby authorized to accept from the Southern Baptist Church, a religious not-for-profit corporation, an application or renewal application for exemption from real property taxes pursuant to section 420-a of the real property tax law for the 1991 assessment roll, for the parcels owned by such church known as 798-820 Stanley Avenue in the city of New York, borough of Brooklyn, being designated on the tax map as block 4381, lot 1 in such borough and which were acquired by such church on April 7, 1991. If accepted, the application or renewal application shall be reviewed as if it had been received on or before the taxable status date established for such assessment rolls.

If satisfied that such church would otherwise be entitled to such exemption if such church had filed an application or renewal application for exemption by the appropriate taxable status date, the commissioner of the New York City Department of Finance, upon approval by the city council of the city of New York, may grant exemption from all taxation beginning with respect to the subject tax rolls due and owing by such church on the effective date of this act and cancel taxes, fines, penalties and interest remaining unpaid, and make appropriate correction of the subject assessment rolls.

§ 2. This act shall take effect immediately.

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**CHAPTER 275**

AN ACT to amend the public authorities law and the executive law, in relation to the creation of the Niagara Falls public water authority

Became a law July 30, 2002, 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. Article 5 of the public authorities law is amended by adding a new title 10-B to read as follows:

**TITLE 10-B****NIAGARA FALLS PUBLIC WATER AUTHORITY**

- Section 1230-a. *Short title.*  
1230-b. *Definitions.*  
1230-c. *Niagara Falls public water authority.*  
1230-d. *Powers of the authority.*  
1230-e. *Water board.*  
1230-f. *General powers of the water board.*  
1230-g. *Special enforcement powers with respect to wastewater facilities.*  
1230-h. *Transfer of facilities by the city of Niagara Falls or any municipality.*  
1230-i. *Agreements among the water board, the city, municipalities and the authority for the provision of projects.*

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

- 1230-j. *Imposition and disposition of fees, rates or charges.*
- 1230-k. *Appropriations for purposes of the water board or the authority; transfer of property to the water board or authority; acquisition of property by the city or municipality for the authority; contracts with the city or any municipality.*
- 1230-l. *Transfer of officers and employees.*
- 1230-m. *Bonds of the authority.*
- 1230-n. *Remedies of bondholders.*
- 1230-o. *State, city, water board or municipality, other than the authority, not liable on authority bonds.*
- 1230-p. *Moneys of the authority.*
- 1230-q. *Bonds, legal investments for fiduciaries.*
- 1230-r. *Agreement with the state.*
- 1230-s. *Exemption from taxes, assessments and certain fees.*
- 1230-t. *Actions against the water board and authority.*
- 1230-u. *Contracts.*
- 1230-v. *Code of ethics.*
- 1230-w. *Equal employment opportunity.*
- 1230-x. *Audit and annual report.*
- 1230-y. *Limited liability.*
- 1230-z. *Separability.*
- 1230-aa. *Effect of inconsistent provisions.*

§ 1230-a. *Short title. This title shall be known and may be cited as the "Niagara Falls public water authority act."*

§ 1230-b. *Definitions. As used or referred to in this title, unless a different meaning clearly appears from the context:*

1. *"Authority" means the corporation created by section twelve hundred thirty-c of this title.*
2. *"Bonds" means the 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" means the city of Niagara Falls, Niagara county.*
4. *"Civil service commission" means the civil service commission of the city of Niagara Falls.*
5. *"Comptroller" means the comptroller of the state of New York.*
6. *"Construction" or "constructed" means the acquisition, erection, building, alteration, improvement, increase, enlargement, extension, reconstruction, renovation or rehabilitation of the water facilities and their associated interceptor and collection systems; of the wastewater facilities and their associated interceptor and collection systems, including treatment facilities and pumping stations; and of the storm water facilities including catch basins, sewers, drainage pipes, treatment facilities and all appurtenances to such water, wastewater, and storm water facilities; the inspection and supervision thereof; and the environmental, engineering, architectural, legal, fiscal, and economic investigations, services and studies, surveys, designs, plans, working drawings, specifications, procedures and other actions preliminary or incidental thereto and claims arising therefrom.*
7. *"Cost" as applied to any project, includes the cost of construction, the cost of the acquisition of all property, including real property and other property, both real, personal and mixed, improved and unimproved, 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 system 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 any environmental, engineering and architectural investigations, surveys, plans and specifications, the cost of consultant and legal services, the cost of any guarantee or bond insurance or any other credit support devices and the cost of other expenses necessary, reasonably related or incidental to the construction of any such 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 project in operation, including the reimbursement to the city, any municipality, state agency, the state, the United States government, or*

any other person for expenditures that would be costs of any project hereunder had they been made directly by the authority or the water board.

8. "Council" means the duly elected council of the city of Niagara Falls.

9. "County" means the county of Niagara, state of New York.

10. "County legislature" means the county legislature of the county of Niagara.

11. "Executive director" means the executive director or chief executive officer of the water board, or any other person duly appointed or delegated to perform such duties by the governing body of the water board.

12. "Facilities" means any of the properties of the authority or the water board or any other real property, personal or mixed property controlled, leased, or operated by the authority or the water board which is used or intended to be used in the system or in furtherance of their respective corporate purposes.

13. "Governing body" means the members of the authority or the water board, as the case may be, constituting and acting as the governing body of the authority or the water board, as the case may be.

14. "Mayor" means the mayor of the city of Niagara Falls.

15. "Municipality" means any county, city, town, village, water district, fire district, fire protection district, school district, sewer district, special or improvement district, commission, board or department of the governmental body indicated, any other such instrumentality, including any agency, or public corporation of the state, or any of the foregoing or any combination thereof.

16. "Person" means any natural person, firm, trustee, executor, personal representative, partnership, association, limited partnership, limited liability company, limited liability partnership, joint venture or corporation, or other legal entity whatsoever, exclusive of a public corporation as defined pursuant to article two-A of the general construction law. The masculine gender shall include the feminine, the singular shall include the plural where indicated by the context.

17. "Project" means any system-related facility or properties, including the acquisition, planning, development, financing or construction thereof.

18. "Properties" means any part of the system or facility of the water board, whether situated within or without the territorial limits of the city or the water board's service area, including the plants, works, structures, instrumentalities or part thereof and appurtenances thereto, real property, or any other property incidental or appurtenant to and included in such facility or facilities or part thereof, and any improvements, extensions and betterments.

19. "Real property" means lands, structures, franchises, rights and interests in land, air space, waters, land underwater, riparian rights and air rights and any and all things and rights included within said term and includes not only fee 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 right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise.

20. "Revenues" means all rates, fees, charges, payments and other income and receipts derived from the operation of the system and the facilities and properties of the water board including, without limiting the generality of the foregoing, investment proceeds and proceeds of insurance, condemnation, and sale or other disposition of assets, together with all federal, state or municipal aid.

21. "Service area" means the area comprising the entirety of the city on the date on which this title becomes effective. Upon mutual agreement with any municipality the service area may be expanded to include such municipality or any portion or part thereof.

22. "State" means the state of New York.

23. "State agency" means any state office, public benefit corporation, public authority, department, board, commission, bureau or division, or other agency or instrumentality of the state.

24. "Storm water facility" means any plants, structures and other property, real, personal or mixed, acquired, rehabilitated, constructed or planned for the purpose of collecting, conveying, accumulating, storing, transmitting, draining, discharging or treating storm water, including, but not limited to, odor control facilities, force mains, conduits, pipelines, interceptors, mains, pumping stations, flow meters, sampling stations, pumps, treatment plants and works, outfalls, contract rights, easements, franchises, approaches, connections, permits,

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meters, rights of flowage or diversion and other plants, structures, equipment, vehicles, conveyances, real or personal property or rights therein and appurtenances thereto necessary or useful and convenient for the collection, conveyance, accumulation, storage, drainage, discharge, transmission, or treatment of storm water.

25. "System" means the entirety of all water, wastewater, and storm water facilities or properties as described herein.

26. "User" means any person or effluent source that directly or indirectly contributes, causes or permits the contribution of waste into or through the wastewater or storm water facilities, or any person who receives or uses water from the water facilities described in this title.

27. "Waste" means any liquid, solid or gaseous substance, or combination thereof, that may be introduced into the wastewater or storm water facilities.

28. "Wastewater facility" means any plants, structures and other property, real, personal or mixed, acquired, rehabilitated, constructed or planned for the purpose of collecting, conveying, accumulating, storing, transmitting, or treating wastewater, including, but not limited to, odor control facilities, force mains, conduits, pipelines, interceptors, mains, pumping stations, flow meters, sampling stations, pumps, piping systems, treatment plants and works, outfalls, contract rights, easements, franchises, approaches, connections, permits, meters, rights of flowage or diversion and other plants, structures, equipment, vehicles, conveyances, real or personal property or rights therein and appurtenances thereto necessary or useful and convenient for the collection, conveyance, accumulation, storage, transport, treatment, disposal or reuse of wastewater.

29. "Water board" means the corporation created by special act of the state legislature as provided in section twelve hundred thirty-e of this title.

30. "Water facility" or "water facilities" means any plants, structures and other property, real, personal or mixed, acquired, rehabilitated, constructed or planned for the purpose of accumulating, storing, supplying, transmitting, treating or distributing water, including, but not limited to, surface or groundwater reservoirs, basins, dams, canals, aqueducts, aqueduct taps, standpipes, conduits, pipelines, interceptors, mains, pumping stations, pumps, water distribution systems, compensating reservoirs, intake stations, waterworks or sources of water supply, wells, purification or filtration plants or other treatment plants and works, contract rights, franchises, approaches, connections, permits, water meters, rights of flowage or diversion and other plants, structures, equipment, vehicles, conveyances, real or personal property or rights therein and appurtenances thereto necessary or useful and convenient for the accumulation, supply, transmission, storage, treatment or distribution of water.

§ 1230-c. Niagara Falls public water authority. 1. A public corporation to be known as the "Niagara Falls public water authority" is hereby created for the 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.

2. The governing body of the authority shall consist of a total of three members, one of which is to be appointed by the mayor, one to be appointed by the temporary president of the senate at the recommendation of the senator or senators representing all or a portion of the city, and one to be appointed by the speaker of the assembly at the recommendation of the assembly member or members representing all or a portion of the city. At all times, at least one member shall be a resident of the city. The member to be appointed by the mayor shall be appointed for a term of office ending on December thirty-first of the third year following the year in which this title shall have become a law, the member to be appointed by the temporary president of the senate shall be appointed for a term ending on the thirty-first day of December of the fourth year following the year in which this title shall have become a law, and the member to be appointed by the speaker of the assembly shall be appointed for a term ending on the thirty-first day of December of the fifth year following the year in which this title shall have become a law. Subsequent appointments of members shall be made for a term of three years ending in each case on December thirty-first of the last year of such term. All members shall continue to hold office until their successors are appointed and qualify. All members shall hold, at a minimum, a bachelor's degree from an accredited college or university, with concentration or degree in one of the following areas of study and at least five years of professional experience therein, or without such degree, such member shall have at least ten years of professional experience in one of the following fields: legal, environmental, financial, management, engineering, human resources, or science. Vacancies shall be filled in the manner provided for original appointment. Vacancies, occurring other than by expiration of term of office, shall be filled by appointment for the unexpired terms. Members may be removed from office only for the same

reasons and in the same manner as provided by section twenty-eight hundred twenty-seven of this chapter. Each member shall attend, in each fiscal year, at least seventy-five percent of all meetings of the governing body. Any member fulfilling the requirement that at least one member be a resident of the city shall forfeit his or her membership on the governing body upon such member's termination of residence in the city, which forfeiture shall create a vacancy. The members of the authority shall receive no compensation for their services but shall be reimbursed for their actual, necessary expenses incurred in connection with the carrying out of the purposes of this title; provided, however, that no member shall be reimbursed for any expense of attending ordinary authority meetings or any other expense exceeding one thousand dollars incurred with respect to any individual purpose, unless the governing body at a meeting duly called and held when all three members are present shall have authorized such expenditure by such member. The powers of the authority shall be vested in and be exercised by the governing body at a meeting duly called and held where a quorum of at least two members are present. Any one or more members of the authority may participate in a meeting of such authority by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear or see and hear each other at the same time. Participation by such means shall constitute presence in person at a meeting. The vote of a majority of the members present at the time of the vote, if a quorum is present at such time, shall be the act of the authority. No action shall be taken except pursuant to the favorable vote of at least two voting members. All votes must be made in person at a meeting and no vote may be made by proxy. The governing body may delegate to one or more of its members, officers or agents such powers and duties as it may deem proper.

3. The officers of the authority shall consist of a chair, a vice-chair, a treasurer, and a secretary. Such secretary or treasurer need not be a member of the authority. Such officers shall be appointed by the governing body and shall serve in such capacities at the pleasure of the governing body. In addition to the treasurer or secretary, the governing body may appoint and at pleasure remove such additional officers as it may determine necessary for the performance of the powers and duties of the authority. The governing body may also from time to time contract for expert professional services. The treasurer shall execute a bond, conditioned upon the faithful performance of the duties of his or her office. The amount and sufficiency of such bond shall be approved by the governing body and the premium therefor shall be paid by the authority.

4. Notwithstanding any inconsistent provision of any general, special or local law, ordinance, resolution or charter, no officer, member or employee of the state, the city, any other municipality, or any state agency, shall forfeit his or her office or employment or any benefits provided under the retirement and social security law by reason of his or her acceptance of appointment as a member, officer or agent of the authority, nor shall service as such member, officer or agent be deemed incompatible or in conflict with such office, membership or employment.

5. (a) The mayor shall file on or before December thirty-first of the year following the year in which this title shall have become a law, in the office of the secretary of state, a certificate signed by the mayor setting forth: (i) the name of the authority; (ii) the names of the members appointed by the mayor; and (iii) the effective date of the special act of the state legislature creating the authority. If such certificate is not filed with the secretary of state on or before such date, then the corporate existence of the authority shall thereupon terminate and it shall thereupon be deemed to be and shall be dissolved.

(b) 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, or so long as the water board shall have contractual duties or obligations outstanding unless adequate provision has been made for the satisfaction thereof. Upon termination of the existence of the authority, all of the rights, obligations and properties of the authority then remaining shall pass to and vest to the city, with the city's consent, if the authority acquired such property from the city, or to a municipality, with the municipality's consent, if the authority acquired such property from such municipality, unless otherwise provided in an agreement between the city or municipality and the authority, and except as otherwise may be specified by law.

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

6. 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 service area 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.

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

§ 1230-d. Powers of the authority. The authority shall have the power:

1. To sue and be sued.
2. To have a seal and alter the same at pleasure.
3. To borrow money and issue bonds or other obligations for its corporate purposes and to provide for the rights of the holders thereof.
4. 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 to it in this title.
5. To enter into agreements with the water board, the city, any other municipality, the state, and any other person for the financing by the authority of projects as herein provided.
6. To acquire by purchase, gift, grant, transfer, contract or lease or by condemnation pursuant to the eminent domain procedure law, lease as lessee, hold, and use any property, real, personal or mixed 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 shall not have the power to condemn property of the water board, the city, or any other municipality.
7. To apply to the appropriate agencies and officials of the federal, state and local governments, any municipality, for such licenses, permits or approvals of its plans or projects as it may deem necessary or advisable, and upon such terms and conditions as it may deem appropriate, and to accept, in its discretion, such licenses, permits or approvals as may be tendered to it by such agencies and officials.
8. To appoint such officers and agents as may be required for the performance of its duties, 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, private consultants and other independent contractors on a contractual\* or otherwise for rendering management, professional or technical services and advice.
9. To make plans and studies necessary, convenient or desirable for the effectuation of the purposes and powers of the authority and to prepare recommendations in regard thereto.
10. To make use of existing studies, surveys, plans, data and other material in the possession of any state agency, the city, any municipality, any person or the water board in order to avoid duplication of effort.
11. 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.
12. To apply for and to accept any gifts, grants, 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 title, and to comply, subject to the provisions of this title, with the terms and conditions thereof.
13. To make and amend by-laws for its organization and management and regulation of its affairs and rules and regulations governing the exercise of its powers and the fulfillment of its purposes under this title. A copy of such rules, regulations and by-laws, and all amendments thereto, duly certified by the secretary of the authority shall be filed in the office of the city clerk and secretary of the water board.
14. To enter into cooperative agreements with the state, any state agency, the city, any municipality, utility companies, individuals, or corporations, within or without the service area, for any lawful purposes necessary or desirable to effect the purposes of this title upon such terms and conditions as shall be determined to be reasonable.
15. With the consent of the chief executive officer of the city or a municipality within the service area, to use officers and employees of the city or municipality and to pay a proper

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\*So in original. (Word "basis" omitted.)

portion of compensation or costs for the services rendered to the authority by such officers or employees.

16. To do all things necessary, convenient or desirable to carry out its purposes and for the exercise of the powers granted in this title provided that the authority shall not have power, within the city, to collect rentals, charges, rates or fees from the owners of real property, or the occupants of real property (other than the occupants of premises owned or controlled by the authority), for services or facilities furnished or supplied in connection with such real property, if such services or facilities are of a character or nature then or formerly furnished or supplied by the city.

§ 1230-e. Water board. 1. A water board, to be known as the "Niagara Falls public water board", may be created by a special act of the state legislature 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 governing body of the water board shall consist of a total of five members, to be appointed and to serve as follows: one member shall be appointed by the governor, one member shall be appointed by the temporary president of the senate at the recommendation of the senator or senators representing all or a portion of the city, one member shall be appointed by the speaker of the assembly at the recommendation of the assembly member or members representing all or a portion of the city, one member shall be appointed by the mayor, and one member shall be appointed by the majority vote of the city council. At least three of the five members shall be residents of the city. When a vacancy occurs that reduces the number of members who are city residents to less than three, the appointment to fill that vacancy must be a city resident. Each member shall attend, in each fiscal year, at least seventy-five percent of all meetings of the governing body. Failure by any party to appoint any member shall not invalidate the creation or establishment of the water board and shall result in the creation of a vacancy on the governing body of the water board which may be filled at any time by such party. The member appointed by the governor shall be appointed for a term ending on December thirty-first of the first year following the year in which this title shall have become a law; the member appointed by the temporary president of the senate shall be appointed for a term ending on December thirty-first of the second year following the year in which this title shall have become a law; the member appointed by the speaker of the assembly shall be appointed for a term ending on December thirty-first of the third year following the year in which this title shall have become a law; the member appointed by the mayor shall be appointed for a term ending on December thirty-first of the fourth year following the year in which this title shall have become a law; and the member appointed by the city council shall be appointed for a term ending on December thirty-first of the fifth year following the year in which this title shall have become a law. Subsequent appointments of members shall be made for a term of three years ending in each case on December thirty-first of the last year of such term. No member shall be a member of the governing body of the authority. All members shall continue to hold office until their successors are appointed and qualify. All members shall hold, at a minimum, a bachelor's degree from an accredited college or university, with a concentration or degree in one of the following areas of study and at least five years of professional experience therein, or without such degree, such member shall have at least ten years of professional experience in one of the following fields: legal, environmental, financial, management, engineering, human resources, or science. Vacancies shall be filled in the manner provided for original appointment. Vacancies, occurring otherwise than by expiration of term of office, shall be filled by appointment for the unexpired terms. Members may be removed from office only for the same reasons and in the same manner as provided by section twenty-eight hundred twenty-seven of this chapter. Any member fulfilling the requirement that at least three members be residents of the city shall forfeit his or her membership on the governing body upon such member's termination of residence in the city, which forfeiture shall create a vacancy. The members of the water board shall receive no compensation for their services but shall be reimbursed for their actual and necessary expenses incurred in connection with the carrying out of the purposes of this title; provided, however, that no member shall be reimbursed for any expense of attending ordinary board meetings or any other expense exceeding one thousand dollars incurred with respect to any individual purpose, unless the governing body at a meeting duly called and held when three members are present shall have authorized such expenditure by such member. The powers of the water board shall be vested in and be exercised by the

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



governing body at a meeting duly called and held where a quorum of three members are present. Any one or more members of the water board may participate in a meeting of such water board by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear or see and hear each other at the same time. Participation by such means shall constitute presence in person at a meeting. No action shall be taken except pursuant to the favorable vote of at least three voting members. All votes must be made in person at a meeting and no vote may be made by proxy. The governing body may delegate to one or more of its members, officers, agents or employees such powers and duties as it may deem proper.

3. The officers of the water board shall consist of a chairman, a vice-chairman and a treasurer, who shall be members of the water board, and a secretary, who need not be a member of the water board. Such officers shall be appointed by the governing body and shall serve in such capacities at the pleasure of the governing body. In addition to the secretary, the governing body may appoint and at pleasure remove such additional officers and employees as it may determine necessary or appropriate for the performance of the powers and duties of the water board, and 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. The governing body may also from time to time contract for expert professional services. The treasurer shall execute a bond, conditioned upon the faithful performance of the duties of his or her office. The amount and sufficiency of such bond shall be approved by the governing body and the premium therefor shall be paid by the water board.

4. Notwithstanding any inconsistent provision of any general, special or local law, ordinance, resolution or charter, no officer, member or employee of the state, the city, any municipality, or any state agency, shall be deemed to have forfeited or shall forfeit his or her office or employment or any benefits provided under the retirement and social security law by reason of his or her acceptance of appointment as a member, officer, agent or employee of the water board, nor shall service as such member, officer, agent or employee be deemed incompatible or in conflict with such office, membership or employment.

5. (a) The mayor shall file on or before December thirty-first of the year following the year in which the special act of the state legislature creating the water board shall have become a law, in the office of the secretary of state, a certificate signed by the mayor setting forth: (i) the name of the water board; (ii) the names of the members appointed by the governor, the temporary president of the senate, the speaker of the assembly, the mayor, and the city council; and (iii) the effective date of the special act of the state legislature creating the water board. If such certificate is not filed with the secretary of state on or before such date, then the corporate existence of the water board shall thereupon terminate and it shall thereupon be deemed to be and shall be dissolved.

(b) The water board and its corporate existence shall continue until terminated by law, provided, however, that no such law shall take effect so long as the water board shall have contractual duties or obligations outstanding unless adequate provision has been made for the satisfaction thereof. Upon termination of the existence of the water board, all of the rights, obligations and properties of the water board then remaining shall pass to and vest to the city, with the consent of the city, if the water board acquired such property from the city, or to a municipality, with the consent of such municipality, if the water board acquired such property from such municipality, unless otherwise provided in an agreement with the city or municipality and the water board, and except as otherwise may be specified by law.

6. 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 service area 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.

7. The water board shall establish and maintain its principal office at which it conducts its business in the city. Notwithstanding any general, special or local law or any charter provision, the city may, and is hereby authorized to lease to the water board such office space as the water board determines to be necessary and appropriate for the needs of the water board, which lease shall be for such consideration and shall contain such terms and conditions as the water board and the city shall determine reasonable and appropriate.

8. The purpose of the act of the legislature establishing the water board shall be, among other things, to provide for the jurisdiction, control, possession, supervision and use of the system; authorization to make rules and regulations in furtherance of this title; the enforcement

of this title, the rules, regulations, permits and orders of the water board in connection with the direct or indirect use of the system facilities by persons within the city and the service area and any other persons for whom the water board provides services including, but not limited to, accepting, treating and disposing of wastewater, industrial waste, and other waste, from whatever source derived; and to enable the water board to comply with all applicable laws of the United States and the state, and the rules, regulations, permits and orders of their regulatory agencies.

§ 1230-f. *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 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 issue bonds, borrow money or otherwise contract indebtedness.*
4. *To enter into agreements with the authority, the city, any other municipality, the state, any state agency, or any person to provide a means whereby the authority or the water board shall finance the cost of constructing projects, as described in the agreement, and the water board may agree to assume title to any such project, and to raise revenues from users through fees, rates or other service charges necessary or appropriate to secure such financing and to pay the cost of the construction, operation, maintenance, management and repair of any such project or the system.*
5. *To acquire, by purchase, gift, grant, transfer, contract or lease or by condemnation pursuant to the eminent domain procedure law, lease as lessee, hold and use any property, real, personal or mixed or any interest therein, constituting or for use in connection with a project or otherwise, as the water board may deem necessary, convenient or desirable to carry out the purposes of this title. In connection with the acquisition of any property, the water board may assume and agree to perform covenants and observe the restrictions contained in any instrument to which any such property is subject; and furthermore the city, any municipality, the state, state agency or any person, as owner of any properties, which the water board is authorized to acquire, is hereby authorized to sell or otherwise transfer the same to the water board, whereupon the water board shall become charged with the performance of all public duties with respect to such properties with which such owner was charged and such owner shall become discharged from the performance thereof and, subject to any limitations in any agreement entered into pursuant to this title, to sell, lease as lessor, transfer or otherwise dispose of any such property or interest therein; provided, however, that any property determined by the water board to be no longer necessary by the water board for use in fulfilling the purposes of the water board pursuant to this title which was acquired by the water board from the city, any municipality, the state, state agency or any person shall be conveyed, immediately after such property has been so determined to be no longer necessary by the water board, at no cost, to the city or to such municipality, the state, or such state agency from whom the water board acquired such property, with the consent of the city, or as may be provided otherwise in any agreement with the city and/or the authority, or the grantor of such property.*
6. *To acquire from the city, the authority and any municipality, title to any water, wastewater, or storm water facility or project.*
7. *To make and amend by-laws for its organization and management and the regulation of its affairs and rules and regulations governing the exercise and enforcement of its powers and the fulfillment of its purposes under this title, including, but not limited to, the sale of water, wastewater and storm water services and the collection of fees, rates and charges therefor, and collection, transport and treatment of wastewater and storm water flows and the collection of fees, rates and charges therefor. A copy of such rules, regulations and by-laws, and all amendments thereto, duly certified by the secretary of the water board shall be filed in the office of the city clerk.*
8. *To establish, fix, revise, charge, collect and enforce the payment of all fees, rates, and other service charges for the use of, or services rendered by, or any commodities furnished by any system-related facility so as to provide revenues which, together with other revenues available to the water board, if any, shall be at least sufficient at all times so that such facility or facilities shall be placed on a self-sustaining basis in accordance with this title.*

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9. To pledge its revenues and mortgage any or all of its properties to secure the obligations of the authority.

10. To construct, improve, maintain, develop, expand, repair, replace or rehabilitate any and all system facilities.

11. To operate and manage and to contract for the operation and management of the facilities and properties of the water board.

12. To enter into contracts, and carry out the terms thereof, for the provision of water, wastewater and storm water services produced or provided by or through supply, transmission, distribution, treatment and other system-related facilities owned, leased, constructed and/or operated by the water board; to collect and treat wastewater through system-related facilities, to provide for storm water drainage and treatment using system-related facilities, and to provide for the disposal of residuals from any water, wastewater or storm water to, or from municipalities, private companies or to any person, as applicable.

13. To apply to the appropriate agencies and officials of federal, state, and local governments for such licenses, permits or approvals of its plans or projects as it may deem necessary or advisable, and upon such terms and conditions as it may deem appropriate, and to accept, in its discretion, such licenses, permits or approvals as may be tendered to it by such agencies and officials.

14. To appoint such officers, agents 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 on a contractual basis or otherwise for rendering management, professional or technical services and advice.

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

16. To make use of existing studies, surveys, plans, data and other material in the possession of any state agency, the city, any municipality, any person or the authority in order to avoid duplication of effort.

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

18. 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, from the state or any agency or instrumentality thereof, from any municipality, the city, the authority or from any other source, 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.

19. To produce, develop, distribute, supply and sell water for domestic, commercial and public purposes at wholesale or retail to any state agency, municipalities, the city, utility companies, private corporations, and persons or individual consumers within or without the city and the service area.

20. To produce, develop, supply and sell wastewater and storm water collection, treatment and disposal services as well as services for the treatment and disposal of biosolids, sludge, grit and related materials for domestic, commercial and public purposes at wholesale or retail to any state agency, municipalities, the city, utility companies, private corporations, and persons or individual consumers within or without the city and service area.

21. To purchase water in bulk from any person, private corporation, state agency, utility company, the city or municipality when necessary or convenient for the operation of any water facility, wastewater facility or storm water facility.

22. To enter into cooperative agreements with the authority, any state agency, other authorities, any municipality, the city, any utility company, private corporation, or person within or without the service area for the interconnection of facilities, the exchange or interchange of services and commodities or for the construction and operation and maintenance of any system facility by the water board for any municipality or person having power to construct and develop a water facility, wastewater facility or storm water facility, upon such terms and conditions as shall be determined to be reasonable including, but not limited to, the reimbursement of all costs of such construction, or for any other lawful purposes necessary or desirable to effect the purposes of this title.

23. To enter into agreements with the state, any state agency, any municipality, the authority, the city, or any person, in furtherance of the purposes of this title as herein provided.

24. To examine, repair or replace any water meter, and to enter upon any property, upon reasonable notice in advance of such entry, for the purpose of such meter examination, repair or replacement as deemed necessary or appropriate by the water board, and to accept an easement or license from the property owner therefor.

25. 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 state or the United States, or obligations, the principal of and interest on which are guaranteed by the state or the United States, of a market value equal at all times to at least the amount of the deposit.

26. 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/or any municipality in the service area.

27. With the consent of the chief executive officer of the city or a municipality, as the case may be, to use officers and employees of the city or such municipality and to pay a proper portion of compensation or costs for the services of such officers or employees.

28. To establish, adopt, amend or cancel and issue a code of ethics, and such rules, regulations, permits and orders as it deems necessary, desirable or convenient, for the jurisdiction, control, supervision, possession, operation and use of the system and its facilities and for the administration and enforcement of this title.

29. To issue permits and orders for all users of the system and to enforce the rules, regulations, orders and permits of the water board for all users and persons and, in the event of non-compliance therewith, to take any enforcement action, as may be established in the water board's rules and regulations or otherwise allowed by this title.

30. To have jurisdiction, control, possession and supervision of the existing system and any project; to maintain, operate, reconstruct and improve the same as a comprehensive system and to make additions, betterments and extensions thereto, and to have all the rights, privileges and jurisdiction necessary or proper for carrying such power into execution. No enumeration of powers in this or any other general, special or local law shall operate to restrict the meaning of this general grant of power or to exclude other powers comprehended within this general grant, except as expressly limited in this title.

31. To engage in any activity otherwise permitted by law which in its judgment would be helpful or convenient for the public or users of the system facilities and in the service of the city or its service area.

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

§ 1230-g. Special enforcement powers with respect to wastewater facilities. 1. In addition to any other enforcement powers provided by this title or any other provision of law, with respect to the jurisdiction, control, supervision, possession, operation and use of the wastewater system and its facilities and for the administration and enforcement of this title with respect to such waste water system, the water board shall have the enforcement powers provided in this section. The provisions of this section shall be liberally construed so as to effect the purpose of this section to permit the water board to qualify as a publicly-owned treatment works (POTW) under applicable federal and state environmental laws.

2. As used or referred to in this section, unless a different meaning clearly appears from the context:

(a) "Discharge" means any introduction of waste into the wastewater or storm water facilities from any effluent source.

(b) "Domestic sewage" means a combination of wastes from the non-commercial preparation, cooking, and handling of food; human bodily wastes and similar matter from sanitary conveniences in dwellings, commercial buildings, industrial buildings and institutions; or any other wastes from non-commercial, non-industrial or non-institutional activities.

(c) "Effluent source" means a source of introduction of any waste into the wastewater or storm water facilities.

(d) "Hazardous substance" means any substance that:

(i) is identified or listed as a hazardous waste or acute hazardous waste in regulations promulgated pursuant to section 27-0903 of the environmental conservation law and all

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amendments thereto, regardless of whether at the time of release the substance was actually a waste; or

(ii) appears on the list of substances hazardous or acutely hazardous to public health, safety or the environment in regulation promulgated pursuant to paragraphs (a) and (b) of subdivision one of section 37-0103 of the environmental conservation law and all amendments thereto; and any substance on the list established by the United States environmental protection agency for reporting pursuant to 42 U.S.C. § 11023, as amended.

(d) "Industrial user" means any person or effluent source that discharges industrial waste.

(e) "Industrial waste" means any liquid, solid, or gaseous substance, or combination thereof, resulting from any process of industrial, commercial, governmental and institutional concerns, manufacturing, business, trade, or research, including the development, recovery, or processing of natural resources, or from sources other than those described as domestic sewage. Groundwater and surface runoff may be considered to be industrial waste if contaminated with industrial process chemical constituents.

(f) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

(g) "Sewage" or "wastewater" means any combination of wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface and storm waters as may be present.

3. (a) The water board shall adopt a schedule of administrative or civil penalties not to exceed ten thousand dollars per violation per day to be assessed against any person who has been finally determined to violate any rules, regulations, permits or orders of the water board made pursuant to this title. In determining the amount of an administrative or civil penalty, the water board or the court shall consider the seriousness of the violation or violations, any history of such violations, any good faith efforts to comply with applicable requirements and such other matters as justice may require. The penalties provided for in this subdivision shall be imposed by action of the water board after a hearing meeting the requirements of due process pursuant to the rules and regulations of the water board.

(b) The water board may bring suit for collection or recovery of any such penalty in any court of competent jurisdiction. Any sanction, penalty, action or cause of action for the recovery of a penalty, under this title, may be settled or compromised by the water board, before or after proceedings are brought to recover such penalties and prior to the entry of judgment thereof. All penalties received by the water board shall be deposited with the treasurer and applied by the board to the benefit of the water board users and authority bondholders.

(c) In addition to the penalties provided in this subdivision, in the event of a violation or threatened violation of any of the water board's rules, regulations, permits, or orders, the water board is authorized to:

(i) obtain a warrant upon application to any court of competent jurisdiction, based upon reasonable cause and reliable information that such violation is threatened or has occurred, for entry onto a user's premises or effluent source where entry has been denied or obstructed; or

(ii) suspend or revoke any user's discharge permit; or

(iii) discontinue, disconnect or block the person or user's access to the system; or

(iv) obtain an injunction or other judicial relief upon application to a court of competent jurisdiction, to enjoin any person or user from continuing such violation or from carrying out the threat of such violation. In any such suit the court shall have jurisdiction to grant the water board, without bond or undertaking, such prohibitory or mandatory injunctions as the facts may warrant, including prevention or abatement of pollutant discharges, temporary restraining orders or preliminary injunctions; or

(v) recover costs or expenses incurred by the water board for any investigation, sampling, monitoring (enhanced or otherwise), removal and remediation costs or other actual expenses, fees or costs, including attorneys' fees and costs.

The imposition of any sanction or penalty or application for judicial relief, shall not be a bar against, or prerequisite for taking any other action against any person.

4. Notwithstanding any inconsistent provisions of law, whenever the executive director finds, after investigation, that any person is discharging any pollutant, sewage, industrial waste or other waste which, in his judgment, presents an imminent danger to the system facilities, the environment or the public health, safety or welfare of persons and the executive director

determines that it would be harmful to delay action until an opportunity for a hearing can be provided, the executive director may, without prior hearing, order such person by notice, in writing wherever practicable or in such other form as in the executive director's judgment will reasonably notify such person whose practices are intended to be proscribed, to discontinue, abate or alleviate such discharge, and thereupon such person shall immediately discontinue, abate or alleviate such discharge. In the event of non-compliance with such order, the water board is authorized to discontinue, disconnect or block the user's access to the system. Within ten days after the issuance of such order, the water board shall give written notice to any such person which provides for an opportunity for a hearing.

5. (a) Whenever required to carry out the purposes and objectives of this title, including, but not limited to, developing or assisting in the development of any discharge limitation, or other limitation, prohibition or discharge standard, pretreatment standard, or standard of performance; or determining whether any industrial user is in violation of any such discharge limitation, or other limitation, prohibition, discharge standard, pretreatment standard, or standard of performance or the water board's rules, regulations, permits or orders;

(i) the water board may require industrial users to:

(1) establish and maintain such records;

(2) make such reports;

(3) install, use and maintain such monitoring equipment or methods (including where appropriate, biological monitoring equipment or methods);

(4) sample such discharges, in accordance with such methods, at such intervals, and in such manner as the water board shall prescribe in its rules, regulations, permits or orders; and

(5) provide such other information as the water board may reasonably require; and

(ii) except as otherwise provided by a court warrant or order, the water board or its authorized representative, (including an authorized contractor acting as a representative of the water board) upon presentation of his credentials:

(1) shall have a right of entry, at all reasonable times, to, upon, or through any premises in which any effluent source of an industrial user is located or in which any records are required to be maintained pursuant to this title or any rules, regulations, orders or permits of the water board;

(2) may, at reasonable times during regular business hours, have access to and copy any records required to be maintained pursuant to this title or any rules, regulations, orders or permits of the water board;

(3) may, during all times of industrial user discharges, inspect any monitoring or other equipment or method which is required pursuant to this title or any rules, regulations, orders or permits of the water board; and

(4) may, during all times of industrial user discharges, have access to and sample any discharges or pollutants, resulting directly or indirectly from activities or operations of the industrial user of the premises in which an effluent source is located.

(b) Any records, reports or information obtained under this section shall, in the case of discharge data, be related to any applicable limitation, toxic pretreatment, or performance standards, and shall be available to the public, except that upon a showing satisfactory to the water board by any person that records, reports, or information, or particular portion thereof (other than discharge data), to which the water board has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the water board shall consider such record, report, or information, or particular portion thereof confidential, except that such record, report, or information may be disclosed to officers, employees, or authorized representatives of the United States or the state concerned with carrying out the Clean Water Act 33 U.S.C. § 1251 et seq., and any applicable state law related thereto or when relevant to any proceeding under this title or the Clean Water Act, 33 U.S.C. § 1251 et seq., and any applicable state law related thereto.

6. (a) Whenever the water board determines, after investigation, that there has been a violation of any of the provisions of this title or any rules, regulations, orders or permits issued pursuant thereto, the water board shall give notice in writing, in such form as will reasonably notify the alleged violator or violators setting forth any thing or act done or omitted to be done or claimed to be in violation of any such provisions, and requiring that the matters complained of be corrected. Such notice shall inform the violator of an opportunity for a hearing, or that the alleged violator appear in person or by attorney before the water board, at a reasonable

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time and place in said notice specified, and show cause why enforcement action should not be taken.

(b) The water board shall establish in its rules and regulations procedures for the conduct of any hearings.

(c) The executive director may designate an agent of the water board or any other person, independent of the water board, to serve and preside as hearing officer.

(d) In any hearing, a hearing officer may administer oaths, examine witnesses, and issue, in the name of the water board, notices of hearings and subpoenas requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in any hearing conducted by the water board.

(e) In any proceeding before the water board, the burden of proof, with respect to violations of or liability imposed by this title or by rules, regulations, orders or permits issued pursuant thereto shall be upon the user or person cited by notice. In any such proof, the water board or the hearing officer may rely upon the self-monitoring reports submitted by the person being investigated or any other evidence.

(f) After due consideration of the written and oral statements, and testimony and arguments, or on default in appearance, the water board may issue and enter such final order to make such final determination as it deems appropriate under the circumstances, and shall notify such person or persons thereof in writing.

(g) In case of contumacy or refusal to obey a notice of hearing or subpoena issued by the water board, the supreme court shall have jurisdiction, upon application of the water board, to issue an order requiring such person to appear and testify or produce evidence as the case may require.

§ 1230-h. Transfer of facilities by the city of Niagara Falls or any municipality. 1. The city or any municipality may, by resolution approved by a majority of the entire voting strength of the applicable governing body of the board of the city or municipality, as the case may be, enter into an agreement with the water board for the transfer, by deed, lease or other arrangement, to the water board, for use in the exercise of its corporate powers and purposes, of any property, real, personal or mixed or any interest therein, constituting a water, wastewater or storm water facility or facilities or otherwise owned by it. Any such property offered to be transferred to the water board within the period commencing on the date the certificate described in paragraph (a) of subdivision five of section twelve hundred thirty-e of this title shall be filed by the mayor and terminating three hundred sixty-five days thereafter shall be accepted by the water board in the physical condition in which it then exists. Any such agreement shall state the consideration, if any, for such transfer and shall provide that the authority shall assume the obligation to pay any or all outstanding indebtedness of the transferring body relating to the system and/or pay all or part of any purchase or acquisition price in cash or in installments over such period of years, at such rate of interest, if any, and may be subject to such other terms and conditions as the water board, the authority, the city or municipality, as the case may be, shall agree to be fair, adequate and reasonable. Notwithstanding the provisions of any general, special or local law or charter to the contrary, any action taken by the city or any municipality 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 or of any municipality in which it is contemplated are to be paid by the authority or the water board from moneys available to it.

3. Any such agreement may provide for the payment by the city or any municipality to the water board of any funds, including the remaining proceeds of any bonds or notes issued for any facility of the system, to be transferred by the city or municipality to the water board as may be determined appropriate by the city or such municipality and the water board.

4. The city, any municipality, the authority and the water board, or any combination thereof, 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 relating to the transfer of system facilities 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 system facilities or any part thereof of the city or any municipality thereby transferred.*

7. Any application filed or proceeding heretofore commenced in relation to any facility of the 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 or state 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 or applicable municipality to the water board unless such assignment and transfer is prohibited by federal or state law.

§ 1230-i. Agreements among the water board, the city, municipalities and the authority for the provision of projects. 1. The authority, the water board, the city, any municipality and any other person may enter into agreements for the purpose of providing for the construction and financing of a project.

2. Any such agreements: (a) shall describe in sufficient detail for reasonable identification the particular project or groups of projects to be financed in whole or in part by the authority, (b) shall describe the plan for the financing of the cost of the construction of such project, including the amount, if any, to be provided by the water board and the source or sources thereof, (c) 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, (d) 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, (e) shall provide for the establishment of user fees, rates 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 project such as to provide that the water board receive revenues at least sufficient, together with other revenues of the water board, if any, to meet the requirements of this title, (f) may provide for the transfer by the city, any state agency, or by any municipality to the water board pursuant to this title of ownership of any project, (g) may provide for the construction and completion of such project by the city, any municipality or the water board and for the management, operation, maintenance and repair thereof, as an integrated part of the system of which such 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, (h) shall provide for the discontinuance or disconnection of the supply of water for nonpayment of fees, rates 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 the public service law, and (i) shall, in the discretion of the authority, require reports concerning the project from the water board to the authority and any municipality.

3. If the city executes an agreement pursuant to this section, relating to the financing of 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 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 system 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 water board shall have held a public hearing at which users of the project shall have had opportunity to be heard concerning the proposed provisions thereof. Notice of such hearing shall be published not less than ten nor more than twenty days in advance in a newspaper or newspapers having a general circulation in the service area as designated by the water board.

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5. Such agreement shall be effective upon the issuance by the authority of bonds to finance the cost of constructing projects of the city, any municipality or the water board.

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.

7. (a) Following the execution of the initial agreement by and between the authority, the water board, the city, any state agency and any municipality pursuant to this section, the secretary of the water board shall, and following the execution of any subsequent agreement by and between the authority, the water board, any state agency, and any municipality pursuant to this section, publish a notice in substantially the following form:

"Notice is hereby given that (here insert the parties to the agreement) (has) (have) on the \_\_\_\_\_ day of \_\_\_\_\_ entered into an agreement with the Niagara Falls Public Water Authority in relation to the construction and financing of (here insert a brief description of the project or facility to which such agreement relates) pursuant to the Niagara Falls Public Water Authority act for the purpose of placing its facilities on an independent basis, imposing fees and rates on system users, which, together with other revenues available for such purposes, if any, are sufficient to pay to the authority debt service on bonds issued by the authority pursuant to the agreement and for management, operation, repair 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 secretary of the water board where the same may be examined by any interested person during regular business hours. The validity of the 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 the state constitution or (ii) the provisions of law which should have been complied with, in relation to the authorization and execution thereof were not substantially complied with, and an action, suit or proceeding is commenced within sixty days after the date of this notice."

(b) The publication authorized by this subdivision shall be in a newspaper or newspapers having a general circulation in the service area as designated by the water board.

(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 nor 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.

§ 1230-j. Imposition and disposition of fees, rates or charges. 1. The water board shall establish, fix and revise, from time to time, fees, rates or other charges for the use of, or services furnished, rendered or made available by, all projects, the facilities and system owned, leased or utilized by the water board pursuant to this title in an 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, (a) 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 bonds of the authority as the same shall become due and payable and maintaining or funding a capital or debt service reserve fund therefor, if any, or any other fund determined necessary by the authority, and, to the extent requested by the city or any municipality in, or annually pursuant to, any agreement, to pay to the city or any municipality, in accordance with any agreement, an amount sufficient for the purpose of paying the principal of and interest on general obligation bonds of the city or any municipality issued for or allocable to the facilities of the system, as the same shall become due and payable, and to maintain or fund reserves therefor, (b) to pay to the city or any municipality, in accordance with any 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 system, (c) to pay to the city or any municipality in accordance with any agreement entered into pursuant to section twelve hundred thirty-h of this title an amount sufficient for the purpose of paying liabilities issued for or allocable to the system, as the same shall become due and payable, (d)

to pay to the city or any municipality, in accordance with this title or any agreement entered into pursuant to this title, an amount sufficient for the purpose of paying any payment in lieu of taxes as the same shall become due and payable, (e) to raise an amount sufficient for the purpose of paying the costs of administering, managing, maintaining, repairing and operating any system facility, (f) to meet any requirements of any agreement, including requirements relating to the establishment of reserves for renewal and replacement and for uncollected rates, fees or other charges and covenants respecting rates, (g) to pay all other reasonable and necessary expenses of the authority and the water board in relation thereto, and (h) to pay or provide for such other purposes or projects as the water board considers appropriate and in the public interest.

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. Subject to any agreements made by the water board in connection with the issuance of any bonds of the authority, 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.

3. 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 agreements.

4. No fee, rate 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 system, the owners of property served or to be served and other interested persons have had an opportunity to be heard concerning the same. Notice of such public hearing shall be published by the water board not less than ten nor more than twenty days before the date set therefor in a newspaper or newspapers having general circulation in the service area, as shall be designated by the water board. 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 secretary of the water board and shall be available for inspection by the public. At all such hearings, any users of the 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 secretary of the water board for public inspection. Such decision shall be published in a newspaper or newspapers having a general circulation in the service area as shall be designated by the water board not later than thirty days after such decision is made. The fees, rates 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.

5. The fees, rates 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.

6. Such fees, rates or other charges, if not paid when due, shall constitute a lien upon the premises served and a charge against the owners or users 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 or municipality in the service area shall be subject to the same fees, rates, rents or other charges under the same conditions as other users of the system. All rights, powers, duties, obligations and functions provided by law with respect to the fixing of charges or rates for the supply of water, wastewater

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or storm water services to users outside the city, shall be deemed to apply, as appropriate, to the water board established pursuant to this title.

7. 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, the city, and any municipality 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 system facility.

8. If there be any default by the water board, in the making of the payments to the authority required under this title, as a result of the failure by the water board to impose sufficient fees, rates 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 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 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.

9. The water board shall prepare and transmit to the city or municipality in the service area of the water board, on or before the first day of December in each year, a list of those persons or property owners within the city or such municipality who are in arrears in the payment of fees, rates, 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 applicable penalties and interest. The city or such municipality shall levy or cause to be levied such sums against the properties liable and shall state the amount thereof in a separate column in the annual tax rolls of such municipality under the name of "delinquent water or wastewater or storm water charges, if any". Such amounts, as and when collected by the city or such municipality, 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 an applicable municipality shall apply to the collection of such unpaid fees, rates or other charges. In the event that the enforcement of unpaid taxes, including unpaid delinquent water board charges, does not yield moneys sufficient to pay in full all unpaid taxes including unpaid delinquent water board charges, the amount of unpaid water board charges to be paid to the water board shall be prorated.

10. The public service commission shall have no jurisdiction over the water board or the authority with respect to the regulation of the fees, rates or other charges established, fixed or revised by the water board except as provided by law with respect to the supply of water to users outside the city or the service area.

§ 1230-k. Appropriations for purposes of the water board or the authority; transfer of property to the water board or authority; acquisition of property by the city or municipality for the authority; contracts with the city or any municipality. 1. In addition to any powers granted to it by law, the city or any municipality may, from time to time, appropriate by resolution sums of money for purposes of either the water board or the authority to defray project costs or any other costs and expenses of either the water board or the authority or to pay amounts payable or anticipated to be payable to either the water board or the authority pursuant to any agreement authorized by this title. Subject to the rights of bondholders, the city, or such municipality may determine if the moneys so appropriated shall be subject to repayment by either the water board or the authority and, in such event, the manner and time or times for such repayment.

2. The city, any state agency or any municipality may give, grant, sell, convey, loan or license the use of or lease to either the water board or to the authority any properties which are useful to either the water board or the authority in order to carry out their powers under this title. Any such transfer of property shall be for such term and upon such terms and conditions, subject to the rights of the holders of any bonds, as the water board, the authority, such state agency and such municipality may agree, including provision for the authority to

*assume the primary responsibility for the payment of any bonds or notes issued by the city, such state agency or such municipality for such properties.*

3. *Notwithstanding the provisions of any other law, general, special or local to the contrary, real property acquired by either the water board, the authority or any municipality from the state or a state agency may be used for any corporate purpose of either the water board or the authority.*

4. *Any municipality, state agency, the water board and/or the authority shall have the power to contract, from time to time, between or among themselves, or with any other person, in relation to the purchase, sale, production, accumulation, supply, transmission, or treatment of water, or the provision of wastewater or storm water services and/or the construction, use, sale and/or leasing, of any system facility of the water board, which contracts may include any or all of the following provisions: (a) requiring the purchase by any municipality of specified amounts of water, wastewater or storm water services; (b) requiring the use by any municipality of a system facility; (c) limiting the right, including a prohibition, of any municipality to construct a facility which will serve the same, or substantially the same, function as a system facility constructed or to be constructed by the water board; (d) requiring the water board to reserve capacity in any system facility to assure the availability to any municipality of a specified amount of use of any system facility; (e) providing for specified minimum periodic payments whether or not water, wastewater or storm water services are actually taken and used, or such system facility is actually used, subject to such limitations, exceptions and provisions therein, and (f) requiring any municipality to pay to the water board such amounts as shall be necessary to assure the continued operation of the water board. All such payments shall be determined and paid in such manner and at such times as may be provided in such contracts.*

5. *No gift, grant, sale, conveyance, loan, contract or lease authorized by this section shall be subject to referendum, permissive or otherwise.*

6. *Any agreement for the supply of water services, wastewater services or storm water services between the city or an agency thereof and any other municipality or state agency, 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.*

7. (a) *Notwithstanding any other provision of this title, neither the authority nor the water board shall supply, or enter into any agreement to supply water to any municipality within the Niagara county water district, or any person or entity within the boundaries of the Niagara county water district without the consent and approval by resolution of a majority of the members of the Niagara county water district administrative board; (b) that nothing contained in paragraph (a) of this subdivision, or elsewhere in this title shall affect in any manner either the existing rights of the city, or such rights assumed by the authority or the water board, or the existing rights of any other municipality with respect to those persons or entities presently receiving water from the city.*

§ 1230-l. *Transfer of officers and employees. 1. In accordance with the provisions of section seventy of the civil service law, any officer or employee of the city that currently works in the system, may, at the request of the water board and with the consent of such city and board, be transferred to the water board and shall be eligible for such transfer and appointment, without further examination, to applicable offices, positions and employment under the water board. Any such officers or employees so transferred to the water board pursuant to this section, who are members of or benefit under any existing pension or retirement fund or system, shall continue to have all rights, privileges, obligations and status with respect to such fund or system as are now prescribed by law, but during the period of their employment by the water board, all contributions to such funds or systems to be paid by the employer on account of such officers or employees shall be paid by the water board.*

2. *A transferred employee shall remain in the same collective bargaining unit as was the case prior to his or her transfer; successor employees to the positions held by such transferred employees shall, consistent with the provisions of article fourteen of the civil service law, be included in the same unit as their predecessors. Employees serving in positions in newly created titles shall be assigned to the same collective bargaining unit as they would have been assigned to such unit were such titles created prior to the establishment of the water board. Nothing*

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contained in this title shall be construed (a) to diminish the rights of employees pursuant to a collective bargaining agreement or (b) to affect existing law with respect to an application to the public employment relations board seeking a designation by the board that certain persons are managerial or confidential.

§ 1230-m. Bonds of the authority. 1. The authority shall have the power and is hereby authorized from time to time to issue bonds in conformance 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 project or projects, or for any other corporate purpose, including reasonable and incidental expenses in connection therewith. The authority shall have power from time to time to refund any bonds by the issuance of new bonds whether the bonds to be refunded have or have not matured, and may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose. Bonds issued by the authority may be general obligation bonds secured by the faith and credit of the authority or may be special obligations payable solely out of particular revenues or other moneys as may be designated in the proceedings of the authority under which the bonds shall be authorized to be issued, subject 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 property, revenues or moneys.

2. The authority is authorized to obtain from any department or agency of the United States or the state or any non-governmental insurer or financial institution, any insurance, guaranty or other credit support device, to the extent now or hereafter available, as to, or for the payment or repayment of interest or principal, or both, or any part thereof, on any bonds issued by the authority and to enter into any agreement or contract with respect to any such insurance 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 bonds or notes of the authority as may then exist.

3. Bonds shall be authorized by resolution of the authority, be in such denominations, bear such date or dates and mature at such time or times as such resolution may provide, except that bonds and any renewals thereof shall mature within forty years 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. Such bonds shall be subject to such terms of redemption, bear interest at such rate or rates payable at such times, be in such form, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms and conditions as such resolution may provide. Bonds may be sold at public or private sale for such price or prices as the authority shall determine provided that no issue of bonds may be sold by the authority at private sale unless such sale and the terms thereof have been approved in writing by (a) the comptroller, where such sale is not to such comptroller, or (b) by the state director of the budget, where such sale is to be to the comptroller. The authority may pay all expenses, premiums and commissions which it may deem necessary or advantageous in connection with the issuance and sale of bonds or authority obligations.

4. The authority may also enter into loan agreements, lines of credit and other security agreements and obtain for or on its behalf letters of credit, insurance, guarantees or other credit enhancements to the extent now or hereafter available, in each case for securing its bonds or to provide direct payment of any costs which the authority is authorized to pay.

5. 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 the revenues, other monies or property of the authority to secure the payment of the bonds, or any costs of issuance thereof, including, but not limited to, any contracts, earnings or proceeds of any grant to the authority received from any private or public source 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 the 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, the amount of bonds the holders of 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 monies may be deposited;*

(h) *the terms and provisions of any trust, mortgage, deed or indenture securing the bonds under which the bond 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 trustees appointed by the bondholders to appoint a trustee pursuant to this title or limiting or abrogating the rights of the bondholders to appoint a trustee, 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 power of the authority to sell or otherwise dispose of any project or any part thereof;*

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

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

(n) *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.*

6. *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 adopt resolutions and enter into such trust indentures, agreements or other instruments as the authority may deem necessary, convenient or desirable concerning the use or disposition of its revenues or other monies or property, including the mortgaging of any property and the entrusting, pledging or creation of any other security interest in any such revenues, monies 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 resolutions, trust indentures, agreements or other instruments. The authority shall have power to enter into amendments of any such resolutions, trust indentures, agreements or other instruments. The provisions of any such resolutions, trust indentures, agreements or other instruments may be made a part of the contract with the holders of bonds of the authority.*

7. *Any provision of the uniform commercial code to the contrary notwithstanding, any pledge of or other security interest in revenues, monies, accounts, contract rights, general intangibles or other personal property made or created by the authority or the water board, pursuant to this title, shall be valid, binding and perfected against all persons, 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 or the water board, irrespective of whether 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.*

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

9. *Neither the members of the authority nor any person executing its bonds shall be liable personally on its bonds or be subject to any personal liability or accountability by reason of the issuance thereof.*

10. *Subject to such agreements with bondholders as may then exist, the authority shall have power out of any funds available therefor to purchase bonds of the authority, which shall thereupon be cancelled, at a price not exceeding (a) if the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date, or (b)*

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*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. Bonds so purchased shall thereupon be cancelled.*

§ 1230-n. Remedies of bondholders. Subject to any resolution or resolutions adopted pursuant to 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 offices of the clerk of the city, secretary of the water board and the authority 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 percent in principal amount of such bonds outstanding, shall in his, her or its own name:

(a) by action or proceeding in accordance with the civil practice law and rules, enforce all rights of the bondholders, including the right to require the authority to require the water board to collect fees, rates and charges adequate to carry out any agreement as to, or pledge of, such fees, rates and charges and to require the authority to carry out any other agreements with the water board, the city and/or any municipality and/or the holders of such bonds to perform its duties under this title;

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

(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 percent 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 Niagara county.

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

6. Any such trustee, whether or not the issue of bonds represented by such trustee has been declared due and payable, shall be entitled as of right to the appointment of a receiver of any part or parts of the properties the revenues of which are pledged for the security of the bonds of such issue, and, subject to any pledge or agreement with holders of such bonds, such receiver may enter and take possession of such part or parts of the properties and shall take possession of all moneys and other property derived from such part or parts of such properties and proceed with any construction thereon or the acquisition of any property, real or personal, in connection therewith which the authority is under obligation to do, and to operate, maintain and reconstruct such part or parts of the properties and collect and receive all revenues thereafter arising therefrom subject to any pledge thereof or agreement with bondholders relating thereto and perform the public duties and carry out the agreements and obligations of the authority under the direction of the court. In any suit, action or proceeding by the trustee, the fees, counsel fees and expenses of the trustee and of the receiver, if any, shall constitute taxable disbursements and all costs and disbursements allowed by the court shall be a first charge on any revenue derived from the properties.

§ 1230-o. State, city, water board or municipality, other than the authority, not liable on authority bonds. Neither the state, the city, the water board nor any municipality, other than the authority, shall be liable on the bonds of the authority and such bonds shall not be a debt of either the state, the water board, the city or any municipality, and each such bond shall contain, on the face thereof, a statement to such effect.

§ 1230-p. 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

trust company in the state designated by the governing body. The moneys in such accounts shall be paid out on check of the treasurer upon requisition by the governing body or of such other person or persons as the governing body may authorize to make such requisitions. All deposits of such moneys shall be secured by obligations of the United States or of the state 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. To the extent practicable, consistent with the cash requirements of the authority, all such moneys shall be deposited in interest bearing accounts. 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, and to carry out any such contract notwithstanding that such contract may be inconsistent with the provisions of this section. Moneys held in trust or otherwise for the payment of bonds or in any way to secure bond 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. Any moneys of the authority not required for immediate use or disbursement may, at the discretion of the authority, be invested in those obligations specified pursuant to the provisions of section ninety-eight-a of the state finance law. Subject to the provisions of any contract with bondholders and with the approval of the comptroller, the authority shall prescribe a system of accounts.

§ 1230-q. *Bonds, legal investments 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, building 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 not 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. Notwithstanding any inconsistent provision of law, 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 are now or hereafter may be authorized.

§ 1230-r. *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 and with those persons or public corporations who may enter into contracts with the authority or the water board, pursuant to the provisions of this title that the state will not alter, limit or impair the rights hereby vested in the authority or the water board to purchase, construct, own and operate, maintain, repair, improve, reconstruct, renovate, rehabilitate, enlarge, increase and extend, or dispose of any project, or any part or parts thereof for which bonds of the authority shall have been issued, to establish and collect rates, rents, fees and other charges referred to in this title, to fulfill the terms of any contracts or agreements made with or for the benefit of the holders of bonds or with any person or public corporation with reference to such project or part thereof, or in any way to impair the rights and remedies of the holders of bonds, until the bonds, together with interest thereon, including interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders of bonds, are fully met and discharged and such contracts are fully performed on the part of the authority or the water board, as the case may be. The authority is authorized to include this pledge and agreement of the state in any agreement with the holders of bonds.

§ 1230-s. *Exemption from taxes, assessments and certain fees.* 1. It is hereby determined that the creation of the authority and the water board and the carrying out of its corporate purposes is in all respects for the benefit of the people of the city and any municipality in the service area and is a public purpose, and the authority and the water board shall be regarded as performing governmental functions in the exercise of the powers conferred upon each by this title, and the authority and the water board shall not be required to pay any fees, taxes, special ad valorem levies or assessments, whether state or local, including but not limited to fees, taxes, special ad valorem levies or assessments on real property, franchise taxes, sales taxes or other excise taxes, upon any property owned by them or under their jurisdiction, control or

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supervision, or upon the uses thereof, or upon their activities in the operation and maintenance of its facilities or any fares, tolls, rentals, rates, charges, fees, revenues or other income received by the authority or the water board. The authority and the water board shall at all times be exempt from any filing, mortgage recording or transfer fees or taxes in relation to instruments filed, recorded or transferred by it or on its behalf. The construction, use, occupation or possession of any property owned by the authority or the water board, including improvements thereon, by any person or public corporation under a lease, lease and sublease or any other agreement shall not operate to abrogate or limit the foregoing exemption, notwithstanding that the lessee, user, occupant or person in possession shall claim ownership for federal income tax purposes.

2. Any bonds issued pursuant to this title together with the income therefrom as well as the property of the authority or the water board shall at all times be exempt from 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, monies, and other property pledged to secure the payment of such bonds shall at all times be free from taxation, except for transfer and estate taxes.

3. Notwithstanding the provisions of this section to the contrary, any real property of the authority or 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.

4. Notwithstanding any provision in this section to the contrary, the water board may pay, or may enter into agreements with the city or any municipality to pay, a sum or sums, annually or otherwise, or to provide other considerations to such city or 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.

5. 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.

6. Notwithstanding any other provision of this section, any payment by the water board in lieu of tax payments described in this subdivision shall be subordinate to any other payments required to be made to the authority pursuant to this title, including, without limitation, the payment of sums to the authority or to any trustee representing the holders of any bonds issued by the authority.

§ 1230-t. Actions against the water board and authority. 1. Except in an action for wrongful death, no action or special proceeding shall be prosecuted or maintained against either the water board or the authority or their members, officers or employees for personal injury or damage to real or personal property alleged to have been sustained by reason of the negligence, tort or wrongful act of either the water board or the authority or of any member, officer, agent or employee thereof, unless (a) a notice of claim shall have been made and served upon the water board or the authority, as the case may be, within the time limit prescribed by and in compliance with section fifty-e of the general municipal law, (b) 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 (c) the action or special proceeding shall be commenced within one year and ninety days after the happening of the event upon which the claim is based. An action against the board or authority for wrongful death shall be commenced in accordance with the notice of claim and time limitation provisions of title eleven of article nine of this chapter.

2. Wherever a notice of claim is served upon the water board or the authority, the water board or the authority, as the case may be, 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 water board or the authority, as the case may be, may require any person presenting for settlement an account or claim for any cause whatever against the water board or the authority, to be sworn before a member, counsel, officer or employee of the water board or the authority 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 water board or the

authority, as the case may be, shall have power to settle or adjust all claims in favor of or against the water board or the authority, as the case may be.

4. Any action or proceeding to which the authority, water board or the people of the state may be parties, in which any question arises as to the validity of this title, shall be preferred over all other civil causes of action or cases, except election causes of action or cases, in all courts of the state and shall be heard and determined in preference to all other civil business pending therein except election causes, irrespective of position on the calendar. The same preference shall be granted upon application of the authority or its counsel in any action or proceeding questioning the validity of this title in which the authority may be allowed to intervene. The venue of any such action or proceeding shall be laid in the supreme court of the county.

5. The rate of interest to be paid by the water board or the authority upon any judgment for which it is liable, other than a judgment on bonds of the authority, shall be the rate prescribed by section five thousand four of the civil practice law and rules. Interest on payments of principal or interest on any bonds in default shall accrue at the rate or rates set forth in such bonds from the due date thereof until paid or otherwise satisfied.

§ 1230-u. *Contracts.* All contracts for construction or purchase of supplies, materials or equipment shall be let by the water board, shall be made in conformity with the applicable provisions of section one hundred three of the general municipal law and section one hundred thirty-five of the state finance law. For the purposes of article fifteen-A of the executive law only, the authority and the water board shall each be deemed a state agency as that term is used in such article, and its contracts for procurement, design, construction, services and materials shall be deemed state contracts within the meaning of that term as set forth in such article. All construction contracts shall be let in accordance with the provisions of state law pertaining to prevailing wages, labor standards and working hours. The water board may, in its discretion, assign contracts for supervision and coordination to the successful bidder for any subdivision of work for which the water board receives bids. The water board shall not award any construction contract except to the lowest bidder who, in its opinion, is qualified to perform the work required and who is responsible and reliable. The water board may, however, reject any or all bids or waive any informality in a bid if it believes that the public interest will be promoted thereby. The water board may reject any bid if, in its judgment, the business and technical organization, plant, resources, financial standing, or experience of the bidder justifies such rejection in view of the work to be performed. Nothing in this title shall be construed to limit or diminish the power of the water board to do any construction directly by the officers, employees or agents of the water board.

§ 1230-v. *Code of ethics.* 1. As used in this section the term "employee" shall mean any member, officer, agent or employee of the authority or the water board.

2. No employee shall have any interest financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties in the public interest.

3. Standards for such code of ethics shall be as follows:

(a) No employee shall accept other employment which will impair his or her independence of judgment in the exercise of his or her official duties.

(b) No employee shall accept employment or engage in any business or professional activity which will require the employee to disclose confidential information which he or she has gained by reason of his or her official position or authority.

(c) No employee shall disclose confidential information acquired by the employee in the course of his or her official duties nor use such information to further his or her personal interests.

(d) No employee shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others.

(e) No employee shall engage in any transaction as representative or agent of the authority or water board with any person or business entity in which he or she has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his or her official duties.

(f) An employee shall not by his or her conduct give reasonable basis for the impression that any person can improperly influence such employee or unduly enjoy his or her favor in the

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

performance of his or her official duties, or that he or she is affected by the kinship, rank, position or influence of any party or person.

(g) An employee shall abstain from making personal investments in enterprises which he or she has reason to believe may be directly involved in decisions to be made by the employee or which will otherwise create substantial conflict between his or her duty in the public interest and his or her private interest.

(h) An employee shall endeavor to pursue a course of conduct which will not raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust.

(i) No employee employed on a full-time basis nor any person, firm or association of which such an employee is a member, nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such employee, shall sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the water board in which such employee serves or is employed.

(j) If any employee shall have a financial interest, direct or indirect, having a value of ten thousand dollars or more, in any activity which is subject to the jurisdiction of a regulatory agency, he or she shall file with the secretary of state and secretary of the water board a written statement that he or she has such a financial interest in such activity which statement shall be open to public inspection.

4. In addition to any penalty contained in any other provision of law, any such employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in accordance with the rules and regulations of the water board. It shall be a misdemeanor for any such employee to be in any way or manner interested, directly or indirectly, in the furnishing of work, materials, supplies or labor, in any contract therefor which the authority or the water board is empowered to make by this title.

§ 1230-w. *Equal employment opportunity.* The water board and the authority shall ensure that all employees or applicants for employment are afforded equal employment opportunity without discrimination.

§ 1230-x. *Audit and annual report.* In conformity with the provisions of section five of article ten of the constitution, the accounts of the water board and of the authority shall be subject to the supervision of the comptroller and an annual audit shall be performed by an independent certified accountant. The water board and the authority shall annually submit to the governor and comptroller and to the state legislature a detailed report pursuant to the provisions of section twenty-eight hundred of this chapter, and a copy of such report shall be filed with the clerk of the county and city.

§ 1230-y. *Limited liability.* Neither the members of the governing body of either the water board or of the authority, nor any officer, or employee thereof acting in their behalf, shall be subject to any personal liability resulting from the ownership, construction, maintenance or operation of any of the projects or properties of either the water board or the authority or from carrying out any of the powers expressly given in this title.

§ 1230-z. *Separability.* If any clause, sentence, paragraph, section, or part of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof involved in the controversy in which such judgment shall have been rendered.

§ 1230-aa. *Effect of inconsistent provisions.* Insofar as the provisions of this title are inconsistent with the provisions of any other act, general or special, or of any charter, local law, ordinance or resolution of any municipality, the provisions of this title shall be controlling. Nothing contained in this section shall be held to supplement or otherwise expand the powers or duties of the authority or water board otherwise set forth in this title. Except as specifically provided for in this title, in the performance of any of its functions, powers and duties, the authority and the water board shall be subject to all applicable general or special laws of the state, the county charter, city charter and any local law or ordinance.

§ 2. Paragraph (b) of subdivision 11 of section 310 of the executive law, as amended by chapter 605 of the laws of 1999, is amended to read as follows:

(b) the following:

Albany County Airport Authority;  
 Albany Port District Commission;  
 Alfred, Almond, Hornellsville Sewer Authority;  
 Battery Park City Authority;  
 Cayuga County Water and Sewer Authority;  
 (Nelson A. Rockefeller) Empire State Plaza Performing Arts Center Corporation;  
 Industrial Exhibit Authority;  
 Livingston County Water and Sewer Authority;  
 Long Island Power Authority;  
 Long Island Rail Road;  
 Long Island Market Authority;  
 Manhattan and Bronx Surface Transit Operating Authority;  
 Metro-North Commuter Railroad;  
 Metropolitan Suburban Bus Authority;  
 Metropolitan Transportation Authority;  
 Natural Heritage Trust;  
 New York City Transit Authority;  
 New York Convention Center Operating Corporation;  
 New York State Bridge Authority;  
 New York State Olympic Regional Development Authority;  
 New York State Thruway Authority;  
*Niagara Falls Public Water Authority;*  
*Niagara Falls Water Board;*  
 Port of Oswego Authority;  
 Power Authority of the State of New York;  
 Roosevelt Island Operating Corporation;  
 Schenectady Metroplex Development Authority;  
 State Insurance Fund;  
 Staten Island Rapid Transit Operating Authority;  
 State University Construction Fund;  
 Triborough Bridge and Tunnel Authority.  
 Upper Mohawk valley regional water board.  
 Upper Mohawk valley regional water finance authority.  
 Upper Mohawk valley memorial auditorium authority.

§ 3. This act shall take effect immediately, provided, however, that the amendments to paragraph (b) of subdivision 11 of section 310 of the executive law made by section two of this act shall not affect the expiration of such paragraph and shall be deemed to expire therewith.

## CHAPTER 276

### AN ACT to amend the county law, in relation to wireless communications service surcharges

Became a law July 30, 2002, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2(b) (2) of the Constitution 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. The county law is amended by adding a new section 308-a to read as follows:

§ 308-a. *Establishment of county of Nassau wireless surcharge. 1. Notwithstanding the provisions of any law to the contrary, the county of Nassau acting through its local county legislative body, is hereby authorized and empowered to adopt, amend or repeal local laws to*

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