

STATE OF NEW YORK

S. 4329-A

A. 7204-A

1991-1992 Regular Sessions

SENATE - ASSEMBLY

March 26, 1991

IN SENATE -- Introduced by Sen. SALAND -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

IN ASSEMBLY -- Introduced by M. of A. BENNETT, LEIBELL -- Multi-Sponsored by M. of A. McMILLEN -- read once and referred to the Committee on Corporations, Authorities and Commissions -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public authorities law, in relation to the creation of the Dutchess county water and wastewater authority, and the Dutchess county water district

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

1 Section 1. Article 5 of the public authorities law is amended by adding
2 a new title 6-C to read as follows:

* TITLE 6-C

DUTCHESS COUNTY WATER AND WASTEWATER AUTHORITY

- Section 1121*2. Short title.
1122*2. Definitions.
1123*2. Dutchess county water and wastewater authority.
1124*2. Powers of the authority.
1125*2. Appropriations for purposes of the authority; transfer of property to authority; acquisition of property by county or other municipality within the county for authority; contracts with county or other municipality.
1126*2. Governmental capacity of the authority and municipalities.
1127*2. Transfer of officers and employees.
1128*2. Bonds of the authority.
1129*2. Remedies of bondholders.
1130*2. State, county nor other municipality, other than authority, not liable on authority bonds.
1131*2. Moneys of the authority.
1132*2. Bonds legal investments for fiduciaries.
1133*2. Agreement of the state.
1134*2. Exemption from taxes, assessments and certain fees.
1135*2. Actions against authority.
1136*2. Construction and purchase contracts.
1137*2. Interest in contracts prohibited.
1138*2. Authority to take affirmative action.
1139*2. Audit, annual report and information.
1140*2. Limited liability.
1141*2. Environmental applications, proceedings, approvals and permits.
1142*2. Dutchess county water district.
1143*2. Separability.
1144*2. Effect of inconsistent provisions.

* NB There are 2 Title 6-C's

* § 1121. Short title. This title shall be known and may be cited as the "Dutchess county water and wastewater authority act".

* NB There are 2 § 1121's

* § 1122. 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 eleven hundred twenty-three 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. "Civil service commission" means the civil service commission of the county of Dutchess.

4. "Comptroller" means the comptroller of the state.

5. "Construct", "construction" or "constructed" means the acquisition, erection, building, alteration, improvement, increase, enlargement, extension, reconstruction, renovation or rehabilitation of a water, sewerage or water and sewerage facility, as the case may be; the inspection and supervision thereof; and the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedure and other actions preliminary or incidental thereto.

6. "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 and improved and unimproved, the cost of the 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 water facilities, sewerage facilities, water and sewerage facilities, machines, apparatus and equipment, financing charges and bond discount, interest prior to, during and after construction to the extent not paid or provided for from revenues or other sources, the cost of engineering and architectural surveys, plans and specifications, the cost of consultant and legal services, the cost of bond or lease guarantee, bond insurance or any other credit support device and the cost of other expenses necessary or incidental to the construction of any 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 funds from the proceeds of such bonds and the financing of the placing of any project in operation, including reimbursement to the county, or any municipality, state agency, the state, the United States government, or any other person for expenditures that would be costs of the project hereunder had they been made directly by the authority.

7. "County" means the county of Dutchess.

8. "County executive" means the county executive of the county, being the chief executive officer of the county.

9. "County legislature" means the county legislature of the county.

10. "Distribution system" means the water facility or facilities employed to deliver water from a transmission facility, or where there is no transmission facility, from a supply facility, to the ultimate consumers of water.

11. "Governing body" means the members of the authority constituting and acting as the governing body of the authority.

12. "Municipality" means any county, city, town, village, or improvement district under the town law, any other such instrumentality, including any agency, or public corporation of the state, or any of the foregoing or any combination thereof.

13. "Person" means any natural person, partnership, association, joint venture or corporation, exclusive of a public corporation.

14. "Project" means any water, sewerage or water and sewerage facility, as the case may be.

15. "Properties" means water, sewerage or water and sewerage facility or facilities, including the plants, works, structures, instrumentalities or part thereof and appurtenances thereto, real property, or any other property incidental to and included in such facility or facilities or part thereof, and any improvements, extensions and betterments.

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

17. "Revenues" means all rates, fees, charges, payments and other income and receipts derived from the operation of the properties of the authority 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, if any.

18. "Sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface water as may be present. The admixture with sewage of industrial or other waste also

shall be considered "sewage" within the meaning of this title.

19. "Sewerage facility" or "sewerage facilities" means any plants, structures and other real and personal property acquired, rehabilitated or constructed or planned for the purpose of collecting, treating and disposing of sewage, including main, trunk, intercepting, connecting, lateral, outlet or other sewers, outfall, pumping stations, treatment and disposal plants, groundwater recharge basins, back-flow prevention devices, sludge dewatering or disposal equipment and facilities, clarifiers, filters, phosphorus removal equipment, 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, pumping, treatment, neutralizing, storing and disposing of sewage.

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

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

22. "Supply facility" means a water facility employed to make groundwater or surface water available for delivery into a transmission facility or distribution system.

23. "Transmission facility" means a water facility used to carry water from a supply facility to a distribution system.

24. "Water facility" or "water facilities" means any plants, structures and other real and personal property acquired, rehabilitated or constructed or planned for the purpose of accumulating, supplying, transmitting, treating or distributing water, including but not limited to surface or groundwater reservoirs, basins, dams, canals, aqueducts, aqueduct taps, standpipes, conduits, pipelines, 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, treatment or distribution of water.

* NB There are 2 § 1122's

* § 1123. Dutchess county water and wastewater authority. 1. A public corporation, to be known as the "Dutchess county water and wastewater authority" is hereby created for the public purpose 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 and shall be a "public district" for purposes of section eighty-nine-1 of the public service law, the objects of which in the judgment of the legislature cannot be attained under general laws. The governing body of the authority shall consist of a total of five voting members, two of whom shall be appointed by the county executive, without confirmation of the county legislature, two of whom shall be appointed by the chairman of the county legislature, without confirmation of the county legislature and without county executive right to veto, and one of whom shall be appointed jointly by the county executive and the chairman of the county legislature, subject to confirmation by the county legislature, and of three non-voting ex officio members, one of whom shall be the manager of the county soil and water conservation district, one of whom shall be the executive director of the environmental management council and one of whom shall be the county commissioner of planning, or their designated representatives. No voting member shall, either at the time of his or her appointment or at any time during which he or she shall serve as a voting member, be a member of the county legislature, a town board, village board of trustees, city council, common council, board of estimate and apportionment, board of estimate and contract, or member of a body serving a similar function in a city, or a member of a body serving a similar function of a sewer or water district which, as of December thirty-first, nineteen hundred thirty-eight, possessed both the power to contract indebtedness in its own name and to levy taxes or benefit assessments upon real property or require the levy of such taxes or benefit assessments. The election or appointment of a voting member to any such office or membership shall result in a vacancy in the position of such voting member effective the date of the assumption of such office or membership. The first members appointed by the county executive shall be appointed for the following terms of office: one for a term ending on December thirty-first of the second year following the year in which this title shall have become law and one for a term ending on December thirty-first of the fifth year following the year in which this title shall have become law. The first members appointed by the county legislature shall have the following terms: one for a term ending on December thirty-first of the first year following the year in which this title shall have become law and one for a term ending on December thirty-first of the fourth year following the year in which this title shall have become law. The first member jointly appointed by the county executive and the county legislature shall have a term of office ending on December thirty-first of the third year following the year in which this title shall have become law. Subsequent appointments of voting members shall be made for a term of five years ending in each case on December thirty-first of the last year of such term. No person who has served as a voting member for two consecutive terms shall be eligible for reappointment as a member for a third term, except after an interval of at least two years. Any initial term or unexpired term greater than two years shall be considered to be a five year term. All voting members shall continue to hold office until their successors are appointed and qualify. 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. Voting members may be removed from office for the same reasons and in the same manner as may be provided by law for the

removal of officers of the county. The members of the authority 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. 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 three voting members are present. No action shall be taken except pursuant to the favorable vote of at least three voting members. 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.

2. The officers of the authority shall consist of a chairman, who shall be a voting member of the authority, and a vice-chairman and a treasurer, who shall be voting members of the authority, and a secretary, who need not be either a voting member or a non-voting member of the authority. Such officers shall be appointed by the voting member of the governing body and shall serve in such capacities at the pleasure of the voting members of the governing body. In addition to the secretary, the voting members of the governing body may appoint and at pleasure remove such additional officers and employees as it may determine necessary for the performance of the powers and duties of the authority and fix and determine their qualifications, duties and compensation, subject to the provisions of the civil service law. The voting members of 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 which shall be approved by the governing body and the premium therefor shall be paid by the authority.

3. Notwithstanding any inconsistent provision of any general, special or local law, ordinance, resolution or charter, no officer, member or employee of the state, any municipality, or any public benefit corporation, shall forfeit his or her office or employment by reason of his or her acceptance of appointment as a member, officer, agent or employee of the authority, nor shall service as such member, officer, agent or employee be deemed incompatible or in conflict with such office, membership or employment and any such officer, member or employee may accept such appointment and serve as a member, officer, agent or employee of the authority without forfeiture of any other office or position of public employment by reason thereof.

4. (a) The county executive shall file on or before December thirty-first of the year in which this title shall have become a law, in the office of the secretary of state, a certificate signed by the county executive setting forth: (1) the name of the authority; (2) the names of the voting members initially appointed, and their terms of office; (3) the names of the ex officio members, and (4) the effective date of this title. The authority shall be perpetual in duration, except that 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) Except as provided in paragraph (a) of this subdivision, the authority and its corporate existence shall continue until terminated by law; provided, however, that no such law shall take effect so long as the authority shall have bonds or other obligations outstanding unless adequate provision has been made for the payment or satisfaction thereof. Upon termination of the existence of the authority, all of the rights and properties of the authority then remaining shall pass to and vest in the county.

5. 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 county 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.

* NB There are 2 § 1123's

* § 1124. 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 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 it in this title;
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 real or personal property or any interest therein, as the authority may deem necessary, convenient or desirable to carry out the purpose of this title. In connection with the acquisition of such properties, the authority may assume any obligations of the owner of such properties and, to the extent required by the terms of any indentures or other instruments under which such obligations were issued, the authority may assume and agree to perform covenants and observe the restrictions contained in such instruments; and furthermore the owner or any properties which the authority is authorized to acquire, is hereby authorized to sell or otherwise transfer the same to the authority, whereupon the authority 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 as a means of so acquiring for such purpose, the authority may purchase all of the stock of any existing privately owned water or sewage corporation or company and in the case of a sale or other transfer of properties of a public utility corporation pursuant to this provision, upon the purchase of the stock of such corporation or company it shall be lawful to dissolve such corporation within a reasonable time, and in the case of an acquisition of properties from a municipality pursuant to this provision, it may assume the primary responsibility for the payment of any bonds or notes issued by such municipality for such properties;
6. To develop, construct or maintain a project; provided, however, that the authority shall not enter into any contract for the construction of a project without having first submitted such project, following completion of compliance with the requirements of the state environmental quality review act and the regulations promulgated in connection therewith in connection with such project, to the county legislature for county legislative review, as herein described. For purposes of such county legislative review, construction shall not include such engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, procedures and other actions necessary or reasonably required to develop a project or to present a project to the county legislature for county legislative review. County legislative review shall encompass a process by which the county legislature shall have the opportunity to review and deny a project proposed to be constructed by the authority. County legislative review shall commence with the authority's delivering, by mail or personally, to the clerk of the county legislature a notification that the authority proposes to construct a project. Such notification shall include a description of the project, the proposed cost and the proposed plan for the financing of such cost and such engineering, architectural, fiscal and economic investigations and studies, surveys, designs and plans prepared by the authority in connection with the project. Following receipt of such notification, the county legislature shall take such action as it may determine in its discretion to be appropriate in connection with its review of the project, which action may include adoption of a resolution, by the affirmative vote of at least two-thirds of the entire voting strength of the county legislature, to deny to the authority the right to construct the project, which vote, to be effective, shall be cast at a meeting held no later than the second consecutive regular meeting of the county legislature following delivery to the clerk of the county legislature of the notification herein described. The date of delivery of notification shall be the date on which such notification shall be actually received by the clerk of the county legislature. If the then current rules and regulations of the county legislature require the filing of a resolution with the clerk of the county legislature to be a specified number of days prior to a meeting of the county legislature for introduction of such resolution at such meeting, such notification shall be deemed to be a resolution and shall be subject to such filing requirement. If the county legislature shall so vote to deny to the authority the right to construct a project, the resolution to so deny shall be submitted to the county executive in such manner and at such time as is provided in the county charter for resolutions subject to approval or disapproval by the county executive. If the county executive shall, within the time permitted for such action, disapprove such resolution, such resolution shall be of no force and effect unless the county legislature shall override such disapproval in such manner and at such time as is provided in the county charter for such action. Nothing in this section shall prohibit the resubmission by the authority to the county legislature at any time of a proposed project which has been previously disapproved;
7. To operate and manage and to contract for the operation and management of properties of the authority;

8. To lease properties of the authority to the county or any other municipality in the county, or any instrumentality thereof, upon such terms and conditions as shall be determined by the authority, the county, the municipality or such instrumentality, as the case may be;

9. To apply to the appropriate agencies and officials of the 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;

10. To appoint such officers and employees as are required for the performance of its duties, to fix and determine their qualifications, duties and compensation, and to retain or employ counsel, auditors, engineers and private consultants on a contract basis or otherwise for rendering professional or technical services and advice;

11. 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;

12. 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;

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

14. To supply and sell water for domestic, commercial and public purposes at retail to individual consumers within the county or

wholesale to municipalities, water districts or district corporations within the county and to collect, treat and discharge sewage produced for such purposes by such generators; provided, however, that the authority shall not sell water at retail to individual consumers or contract with individual consumers for the collection or treatment of sewage where such individual consumers are located in a municipality, water district, sewer district or district corporation which is empowered to provide water or sewer services, as the case may be, unless the authority shall have first notified, in writing, by certified mail, such municipality, water district, sewer district or district corporation that it intends to sell water at retail to individual consumers located therein or collect or treat sewage from individual consumers located therein, as the case may be, identified either by name or location or by the area to be served, and such municipality, water district, sewer district or district corporation does not notify the authority, within sixty days of receipt of such notice, that it objects to the authority selling water or collecting or treating sewage, as the case may be, to such individual consumers;

15. To purchase water in bulk from any person, private corporation or municipality when necessary or convenient for the operation of any water facility;

16. To enter into cooperative agreements with other authorities, municipalities, water districts, sewer districts, district corporations, utility companies, individuals, or corporations, within or without the county, 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;

17. To make by-laws for the management and regulation of its affairs and subject to agreements with bondholders, rules for the sale of water or the collection of sewage and the collection of rates, rents and charges therefor. A copy of such rules and by-laws, and all amendments thereto, duly certified by the secretary of the authority shall be filed in the office of the county clerk of the county and shall be published thereafter once in each of two newspapers having a general circulation in the county. Violations of such rules shall be punishable by fine, not exceeding fifty dollars, or by imprisonment for not longer than thirty days, or both;

18. To fix rates and collect charges for the use of the facilities of, any services rendered by or any commodities furnished by the authority such as to provide revenues sufficient at all times to pay, as the same shall become due, the principal and interest on the bonds or other obligations of the authority together with the maintenance of proper reserves therefor, in addition to paying as the same shall become due the expense of operating and maintaining the properties of the authority together with proper reserves for maintenance, contingencies and all other obligations and indebtedness of the authority; provided, however, that nothing contained in this subdivision, or in this title, shall empower the authority to collect rentals, charges, rates or fees from the owners of real estate, or the occupants of real estate (other than the occupants of premises owned or occupied by the authority or by the state or any civil division thereof) located in any city unless the electors of such city shall approve the granting to the authority of such powers by a majority vote at a general or special election in such city;

19. To utilize the service of officers and employees of the county and to pay a proper portion of compensation or costs for the services of

such officers or employees with the consent of the county executive, and upon notice to the chair of the county legislature;

20. To provide for the discontinuance or disconnection of the supply of water or the provision of sewerage service, or both, as the case may be, for non-payment of fees, rates, rents or other charges therefor imposed by the authority, provided such discontinuance or disconnection of any supply of water or the provision of sewerage service, or both, as the case may be, shall not be carried out except in the manner and upon notice as is required of a waterworks corporation pursuant to subdivisions three-a, three-b and three-c of section eighty-nine-b and section one hundred sixteen of the public service law; and

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

* NB There are 2 § 1124's

* § 1125. Appropriations for purposes of the authority; transfer of property to authority; acquisition of property by county or other municipality within the county for authority; contracts with county or other municipality. 1. In addition to any powers granted to it by law, the county legislature, or the finance board, as such term is defined in the local finance law, of any other municipality in the county, may, from time to time, appropriate by resolution sums of money for purposes of the authority to defray project costs or any other costs and expenses of the authority or to pay amounts payable or anticipated to be payable to the authority pursuant to any contract or lease authorized by this title. Subject to the rights of bondholders, such county legislature or finance board may determine if the moneys so appropriated shall be subject to repayment by the authority to the appropriate municipality and, in such event, the manner and time or times for such repayment. In the event there shall remain at the end of any fiscal year of the county or any such municipality an unexpended balance of any such appropriation, such unexpended balance shall remain on deposit in the fund or account and such appropriation shall not lapse.

2. The county or any other municipality with the county, may give, grant, sell, convey, loan, license the use of or lease to the authority any properties which are useful to the authority in order to carry out its powers under this title. Any such transfer of properties shall be for such term and upon such terms and conditions, subject to the rights of the holders of any bonds, as the authority and the county or such other municipality may agree, including provision for the authority to assume the primary responsibility for the payment of any bonds or notes issued by the county or such other municipality for such properties.

3. The county or any other municipality within the county may acquire by purchase or by exercise of the power of eminent domain real property in the name of the county or such other municipality for any corporate purpose of the authority.

4. Notwithstanding the provisions of any other law, general, special or local to the contrary, real property acquired by the authority, the county or any other municipality within the county from the state may be used for any corporate purpose of the authority.

5. The county, one or more of the municipalities within the county, and the authority shall have the power to contract, from time to time, between or among themselves, in relation to the purchase, sale, production, accumulation, supply, transmission or treatment of water, the collection, transmission or treatment or disposal of sewage or both of the aforesaid, or the construction, use, sale and/or leasing, of any water, sewerage or water and sewerage facility of the authority, which contracts may include any or all of the following provisions: (i) requiring the purchase by the county or any such municipality of specified amounts of water; (ii) requiring the transmission by the county or any such municipality of specified amounts of sewage to the authority and the payment for the treatment or disposal of such sewage; (iii) requiring the use by the county or any such municipality of a water, sewerage or water and sewerage facility; (iv) limiting the right, including a prohibition, of the county or any such municipality to construct a water, sewerage or water and sewerage facility which will serve the same, or substantially the same, function as a water, sewerage or water and sewerage facility constructed or to be constructed by the authority; (v) requiring the authority to reserve capacity in any water, sewerage or water and sewerage facility to assure the availability to the county or any such municipality of a specified amount of water, the treatment or disposal of a specified amount of sewage, or of the use of any water, sewerage or water and sewerage facility; (vi) providing for

specified minimum periodic payments whether or not water is actually taken and used, sewage is actually treated or disposed of, or such water, sewerage or water and sewerage facility is actually used, subject to such limitations, exceptions and provisions therein; (vii) requiring the county or any such municipality to pay to the authority such amounts as shall be necessary to assure the continued operation of the authority; and (viii) requiring any such municipality to pay to the county such amount as shall be necessary to assure that the periodic payments by the county to the authority will not result in an undue burden upon the residents of the county. All such payments shall be determined and paid in such manner and at such times as may be provided in such contracts.

6. Any gift, grant, sale, conveyance, loan, contract or lease authorized by this section may be made or entered into by the county, any other such municipality and, or, the authority and no such gift, grant, sale, conveyance, loan, contract or lease shall be subject to referendum, permissive or otherwise.

* NB There are 2 § 1125's

* § 1126. Governmental capacity of the authority and municipalities. The authority, the county and the other municipalities, in carrying out their respective powers and duties under this title, shall be deemed to be acting in a governmental capacity and in the performance of an essential governmental function.

* NB There are 2 § 1126's

* § 1127. Transfer of officers and employees. Any public officer or employee under civil service who is selected by the authority may, with the consent of the commission, board or chief executive officer of the municipality by which he or she has been employed, be transferred to the authority and shall be eligible for such transfer and appointment without examination to comparable offices, positions and employment under the authority. The salary or compensation of any such officer or employee, after such transfer, shall be paid by the authority. Any such officers or employees so transferred to the authority 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 authority, all contributions to such funds or systems to be paid by the employer on account of such officers or employee shall be paid by the authority. All such officers or employees so transferred to the authority who have been appointed to positions under the rules and classifications of the civil service commission shall have the same status with respect thereto after transfer to the authority as they had under their original appointment.

* NB There are 2 § 1127's

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

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

3. (a) Bonds shall be authorized by resolution of the authority, be in such denominations, bear such date or dates and mature at such time or times as such resolution may provide, except that bonds and any renewals thereof shall mature within forty years from the date of their original issuance and notes and any renewals thereof shall mature within five years from the date of their original issuance. Bonds shall be subject to such terms of redemption, bear interest at such rate or rates per annum, which may vary from time to time, as may be necessary to effect the sale thereof and shall be payable at such times, be in such form, carry such registration privileges, be executed in such manner, be subject to tender to the authority, with or without extinction or cancellation, be payable in such medium of payment at such place or places, and be subject to such terms and conditions as such resolution may provide. Bonds may be sold at public or private sale for such price or prices as the authority shall determine, provided that no bonds of the authority may be sold by the authority at private sale unless such sale and the terms thereof have been approved in writing by the comptroller, where such sale is not to be to such comptroller, or by the state director of the budget, where such sale is to be to the comptroller.

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

limited to the name of the issuer, the amount of the issue, the interest rate and interest cost per year for each such sale.

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

(2) Such agreements may be executed on or before the date of issuance of the obligations to be paid pursuant thereto, provided, however, that any reimbursement obligation of the authority shall be deemed indebtedness of the authority; (i) only as of the date that the corresponding advance is made pursuant to subparagraph one of this paragraph; and (ii) only in the amount of the advance made pursuant to such subparagraph. Such agreements may include a pledge by the authority of its faith and credit for the payment of any indebtedness deemed to be contracted as set forth in this paragraph, and may provide that any such indebtedness arising from a reimbursement obligation contracted pursuant to this section shall be paid in accordance with the terms of such agreement. Such indebtedness shall be excluded in ascertaining the power of the authority to contract indebtedness pursuant to this chapter. Such agreements shall also include such terms and conditions as the authority

shall deem appropriate, including provisions for the payment of reasonable fees by the authority in return for a commitment to advance funds pursuant to such agreement. Such fees shall be deemed part of the cost of the object or purpose in connection with which they are incurred.

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

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

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

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

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

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

(4) Where the credit or liquidity enhancement procured is an irrevocable letter of credit or an acquisition arrangement with a liquidity enhancer, such instrument shall be:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* NB There are 2 § 1128's

* § 1129. Remedies of bondholders. Subject to any resolution or resolutions adopted pursuant to paragraph (j) of subdivision four of section one thousand one hundred twenty-eight of this title:

1. In the event that the authority shall default in the payment of principal or of 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 of instruments filed in the office of the clerk of Dutchess county and provided 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 collect lease payments, rates and charges adequate to carry out any agreement as to, or pledge of, such lease payments, rates and charges and to require the authority to carry out any other agreements with the county and any other 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 incidentally 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 Dutchess 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.

* NB There are 2 § 1129's

* § 1130. State, county nor other municipality, other than authority, not liable on authority bonds. Neither the state, the county nor any other municipality, other than the authority, shall be liable on the bonds of the authority and such bonds shall not be a debt of the state, the county nor any such municipality, and each such bond shall contain, on the face thereof, a statement to such effect.

* NB There are 2 § 1130's

* § 1131. Moneys of the authority. All moneys of the authority from whatever source derived shall be paid to the treasurer of the authority and shall be deposited forthwith in a bank or banks in the state designated by the 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 the county or of any other municipality within the county of a market value equal at all times to the amount on deposit and all banks and trust companies are authorized to give such security for such deposits. The authority shall have power, notwithstanding the provisions of this section, to contract with the holders of any bonds as to the custody collection, security, investment and payment of any moneys of the authority or any moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds, 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 bonds and deposits of such moneys may be secured in the same manner as moneys of the authority and all banks and trust companies are authorized to give such security for such deposits. 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.

* NB There are 2 § 1131's

* § 1132. 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, 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. The bonds are also hereby made securities which may be deposited with and may be received by all public officers and bodies of this state and all municipalities for any purposes for which the deposit of bonds or other obligations of this state is now or hereafter may be authorized.

* NB There are 2 § 1132's

* § 1133. Agreement of the state. The state does hereby pledge to and agree with the holders of any bonds issued by the authority pursuant to this title that the state will not alter or limit the rights hereby vested in the authority to purchase, construct, maintain, operate, repair, improve, increase, enlarge, extend, reconstruct, renovate, rehabilitate 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 lease payments, rates, fees and other charges referred to in this title and to fulfill the terms of any agreement made with or for the benefit of the holders of the bonds or with any public corporation or person with reference to such project or part thereof, or in any way impair the rights and remedies of the bondholders, until the bonds, together with the 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 such holders, are fully met and discharged; provided, however, that this section shall not be construed to limit in any manner the ability of the state to alter, amend or enforce laws or regulations to protect public health and the environment. The authority is authorized to include this pledge and agreement of the state in any agreement with bondholders.

* NB There are 2 § 1133's

* § 1135. Actions against authority. 1. No action or special proceeding shall be prosecuted or maintained against the authority for personal injury or damage to real or personal property alleged to have been sustained by reason of the negligence or wrongful act of the authority or of any member, officer, agent or employee thereof, unless (a) a notice of claim shall have been made and served upon the authority 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.

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

3. The authority may require any person presenting for settlement an account or claim for any cause whatever against the authority, to be sworn before a member, counsel, officer or employee of 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 authority shall have power to settle or adjust all claims in favor of or against the authority.

4. The rate of interest to be paid by the authority upon any judgment for which it is liable, other than a judgment on its bonds, shall be the rate prescribed by section three-a of the general municipal law. 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.

* NB There are 2 § 1135's

* § 1136. Construction and purchase contracts. The authority shall let contracts for construction or purchase of supplies, materials or equipment pursuant to sections one hundred one and one hundred three of the general municipal law. Nothing in this section shall be construed to limit the powers of the authority to do any construction directly by the officers, agents and employees of the authority.

* NB There are 2 § 1136's

* § 1137. Interest in contracts prohibited. It shall be a misdemeanor for any member of the governing body or any officer, agent, servant or employee of the authority to be in any way or manner interested, directly or indirectly, in the furnishing of work, materials, supplies or labor, or in any contract therefor which the authority is empowered by this title to make.

* NB There are 2 § 1137's

* § 1138. Authority to take affirmative action. 1. The authority in awarding contracts for designs, construction, services or materials for projects authorized by this title shall ensure that all employees and applicants for employment are afforded equal opportunity without discrimination.

2. For the purposes of article fifteen-A of the executive law only, the authority shall be deemed a state agency as that term is used in such article, and its contracts for design, construction, services and materials shall be deemed state contracts within the meaning of that term as set forth in such article.

* NB There are 2 § 1138's

* § 1139. Audit, annual report and information. In conformity with the provisions of section five of article ten of the constitution, the accounts of the authority shall be subject to the supervision of the comptroller. The authority shall annually submit to the governor and comptroller and to the state legislature a detailed report pursuant to the provisions of section two thousand five hundred of title one of article nine of this chapter, and a copy of such report shall be filed with both the county executive and with the county legislature. The authority shall comply with the provisions of sections two thousand five hundred one, two thousand five hundred two and two thousand five hundred three of title one of article nine of this chapter.

The county executive and the chairman of the county legislature may each designate a representative to act as a liaison to the authority. Each such liaison shall have the right to attend all meetings of the authority and request, from time to time, such information as the liaison may deem reasonably necessary for the purpose of informing the county executive and the county legislature, respectively, of the activities of the authority.

* NB There are 2 § 1139's

* § 1140. Limited liability. Neither the members of the governing body, nor any municipality, officer or employee acting in its behalf, while acting within the scope of their authority, shall be subject to any personal liability resulting from the construction, maintenance or operation of any of the properties of the authority or from carrying out any of the powers expressly given in this title; provided, however, that this section shall not be held to apply to any independent contractor.

* NB There are 2 § 1140's

* § 1141. Environmental applications, proceedings, approvals and permits. 1. Any application in relation to the purposes of or contemplated by this title heretofore filed, or any proceeding heretofore commenced, or any determination or decision heretofore made by the county, any municipality within the county or any water district, sewer district or district corporation and sent to or filed with the state department of environmental conservation, the department of transportation or any other state agency or instrumentality or with the United States environmental protection agency or any other federal agency or instrumentality shall inure to and for the benefit of the authority to the same extent and in the same manner as if the authority had been a party to such application or proceeding from its inception, and the authority shall be deemed a party thereto, to the extent not prohibited by any federal law. Any license, approval, permit or decision heretofore or hereafter issued or granted pursuant to or as a result of any such application or proceeding shall inure to the benefit of and be binding upon the authority and shall be assigned and transferred by the county or any such municipality to the authority, unless such assignment and transfer is prohibited by federal law.

2. All such applications, proceedings, licenses, approvals, permits and decisions shall further inure to and for the benefit of and be binding upon any person leasing, acquiring, constructing, maintaining, using or occupying any facility financed in whole or in part by the authority.

* NB There are 2 § 1141's

* § 1142. Dutchess county water district. There is hereby defined and established an area to be known as the "Dutchess county water district" which shall embrace all the territory located within the county. After the establishment of the Dutchess county water district, such district shall have such powers as are provided in and shall be governed in accordance with the provisions of article five-A of the county law, including, without limitation, the power to enter into contracts, and carry out the terms thereof, with the city of New York, the New York city municipal finance authority, New York city water board, or any agency or instrumentality thereof, for the purchase of water.

* NB There are 2 § 1142's

* § 1143. Separability. If any section, clause or provision in this title shall be held by a competent court to be unconstitutional or ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective, it shall be valid and effective, and no other section, clause or provision shall on account thereof be deemed invalid or ineffective.

* NB There are 2 § 1143's

* § 1144. 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 the county, or other 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 otherwise set forth in this title. Nothing contained in this title shall be held to alter or abridge the powers and duties of the department of environmental conservation or the department of health.

* NB There are 2 § 1144's