

Mckinney's Consolidated Laws of New York Annotated [Currentness](#)  
Public Authorities Law [\(Refs & Annos\)](#)  
Chapter 43-A. Of the Consolidated Laws  
    <sup>Ⓜ</sup> [Article 5](#). Public Utility Authorities  
        → [Title 3](#). Erie County Water Authority [\(Refs & Annos\)](#)  
            → **§ 1050. Short title**

This title may be cited as the “Erie County Water Authority Act.”

### **§ 1051. Definitions**

As used or referred to in this title, unless a different meaning clearly appears from the context,

1. The term “district” shall mean the Erie county water authority district created by [section one thousand fifty-two](#) of this title;
2. The term “authority” shall mean the corporation created by [section one thousand fifty-three](#) of this title;
3. The term “county” shall mean the county of Erie;
4. The term “treasurer” shall mean the treasurer of the authority;
5. The term “comptroller” shall mean the comptroller of the state of New York;
6. The term “personnel officer” shall mean the personnel officer of the county of Erie;
7. The term “properties” shall mean the water supply and distribution system or systems of the authority, including the plants, works, instrumentalities or parts thereof and appurtenances thereto, lands, easements, rights in land and water rights, rights-of-way, contract rights, franchises, approaches, connections, dams, reservoirs, water mains and pipe lines, pumping stations and equipment, or any other property, real, personal or mixed, incidental to and included in such system or part thereof, and any improvements, extensions and betterments, situated within the county of Erie and any source of supply or water supply system or any part thereof, situated without the county of Erie;
8. The term “bonds” shall mean the bonds, notes and obligations, issued by the authority, pursuant to this act;  
[\[FN1\]](#)
9. The term “revenues” shall mean all rents, charges and other income derived from the operation of the properties of the authority;
10. The term “municipality” shall mean a city, town, or village.

[\[FN1\]](#) This title.

#### § 1052. Erie county water authority district

There is hereby created a district to be known as the “Erie county water authority district” which shall embrace so much of the territory included within the territorial limits of the county of Erie, as may be outside the territorial limits of the city of Buffalo, except the township of Tonawanda, including the village of Kenmore, in the state of New York.

#### § 1053. Erie county water authority

1. A corporation known as “Erie county water authority” is hereby created for the purposes and charged with the duties and having the powers provided in this title. The authority shall be a body corporate and politic constituting a public benefit corporation. It shall consist of three members, all of whom shall be residents of the county. Not more than two members of the said authority in office at any time shall belong to the same political party. The appointment, pursuant to the provisions of chapter eight hundred forty-five of the laws of nineteen hundred forty-nine, [FN1] of the first members, Richard F. Ball, Jerome D. Van De Water, and John Horner, for the terms, respectively, of one year, two years and three years from the twenty-seventh day of April, nineteen hundred forty-nine, is hereby ratified and confirmed. Any subsequent appointment shall be made for a term of three years and shall be made by the chairman of the board of supervisors of the county of Erie, pursuant to nominations in writing by the majority, respectively, of the supervisors of each political party represented on such board of supervisors, subject to confirmation by a majority of such board of supervisors. All members shall continue to hold office until their successors are appointed and qualify. The appointment of the first chairman, John Horner, pursuant to the provisions of chapter eight hundred forty-five of the laws of nineteen hundred forty-nine, [FN1] for a term of one year from the twenty-seventh day of April, nineteen hundred forty-nine, is hereby ratified and confirmed. Subsequent chairmen shall be elected annually by the members of the authority. Vacancies, occurring otherwise than by expiration of term of office, shall be filled by appointments by the board of supervisors for the unexpired terms. Members of the authority 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 such compensation for their services as shall be fixed by the board of supervisors and be reimbursed for all 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 members at a meeting duly called and held and two members shall constitute a quorum. No action shall be taken except pursuant to the favorable vote of at least two members. The authority may delegate to one or more of its members, officers, agents or employees such powers and duties as it may deem proper.

2. The authority and its corporate existence shall continue for a period of twelve years from the twenty-seventh day of April, nineteen hundred forty-nine, and thereafter until all its liabilities have been met and its bonds have been paid in full or such liabilities or bonds have otherwise been discharged and thereupon all rights and properties of the authority shall pass to and be vested in the county of Erie.

3. The officers of the authority shall consist of a chairman, a vice-chairman and a treasurer who shall be members of the authority, and a secretary, who need not be a member of the authority. The vice-chairman, treasurer and secretary shall be appointed by the authority and shall serve at the pleasure of the authority. The authority may appoint an attorney and an engineer and such additional officers and employees as it may require for the performance of its duties, fix and determine their qualifications, duties, and compensation, subject to the provisions of the civil service law of the state of New York and such rules as the personnel officer of the county of Erie may adopt and make applicable to such authority. The authority 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 office, the amount and sufficiency of which shall be approved by the authority and the premium therefor shall be paid by the authority.

4. It is hereby determined and declared that the authority and the carrying out of its powers, purposes and duties

are in all respects for the benefit of the people of the county of Erie and the state of New York, for the improvement of their health, welfare and prosperity and that the said 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.

5. Upon the creation of the authority and thereafter, the board of supervisors may, by resolution, from time to time appropriate sums of money to defray the preliminary expenses of the authority incurred in the exercise of the powers conferred upon it by this title and shall include among other costs, the costs incurred by the authority for administrative, engineering, accounting and legal services. Upon the issuance of bonds for any of the purposes authorized by this title the authority shall repay to the county of Erie that portion of the moneys appropriated by the county and expended by the authority in connection with and attributed to the purpose or purposes for which the bonds were issued. Any such allocation shall be subject to the approval of the comptroller of the county of Erie.

[\[FN1\]](#) Former Title 3.

#### **§ 1054. Powers of the authority**

The authority shall have power:

1. To sue and be sued;
2. To have a seal and alter the same at pleasure;
3. To acquire, in the name of the authority, lease, hold and dispose of personal property or any interest therein for its corporate purposes, including the power to purchase prospective or tentative awards in connection with the exercise of the power of condemnation hereinafter granted;
4. To purchase, in the name of the authority, any water supply system, water distribution system, including plants, works, instrumentalities or parts thereof and appurtenances thereto, lands, easements, rights in land and water rights, rights-of-way, contract rights, franchises, approaches, connections, dams, reservoirs, water mains and pipe lines, pumping stations and equipment, or any other property, real, personal or mixed, incidental to and included in such system or part thereof, and any improvements, extensions, and betterments, situated within the county of Erie, provided however that the authority shall have the power to purchase any source of supply, or water supply system or any part thereof situated without the county of Erie; and in connection with the purchase 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 [\[FN1\]](#) and observe the restrictions contained in such instruments; and furthermore the owner of 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 in the case of a sale or other transfer of properties of a public utility corporation pursuant to this provision, it shall be lawful to dissolve such corporation;
5. To condemn, in the name of the authority, any water supply system, water distribution system, including plants, works, instrumentalities, or parts thereof and appurtenances thereto, lands, easements, rights in land and water rights, rights-of-way, contract rights, franchises, approaches, connections, dams, reservoirs, water mains and pipe lines, pumping stations and equipment, or any other property, real, personal or mixed, incidental to and included in any such source of supply or any such system or parts thereof, and any improvements, extensions and betterments, situated within the county of Erie, and to condemn any necessary source of supply or water supply system, or any parts thereof, situated without the county of Erie. The authority shall exercise the power of condemnation

hereby granted in the manner provided in the condemnation law [\[FN2\]](#) or in the manner provided by law for the condemnation of land by the county of Erie. Upon the taking of the constitutional oath of office by the commissioners of appraisal and the filing of such oaths, title to the properties described in the condemnation proceedings shall become and be vested in the authority as hereinafter provided in this title and such authority shall be entitled to enter into possession of the property condemned and to operate the same for its corporate purposes. Upon the vesting of title in the authority, any person entitled to a final award shall have and retain a lien upon such property to secure the payment of such compensation with interest, as shall be directed to be paid by the final order in the condemnation proceeding. The lien shall be discharged and satisfied by payment of the compensation, with interest directed to be paid by the final order, less any sums, with interest paid in advance of the determination of the final award in condemnation as hereinafter provided. In the exercise of such power of condemnation, the property being condemned shall be deemed, when so determined by the authority, to be for a public use superior to the public use in the hands of any other person, association, or corporation, provided, however, that the authority shall have no power to condemn property the legal title to which is vested in a municipal corporation or political subdivision of the state unless such municipal corporation or political subdivision shall consent thereto;

6. To construct and develop any water supply system, water distribution system, including plants, works, instrumentalities, or parts thereof, and appurtenances thereto, dams, reservoirs, water mains, pipe lines, pumping stations and equipment, or any other property incidental to or included in such system or part thereof, and to acquire, by condemnation in the manner provided by this title, or by purchase, lands, easements, rights in land, and water rights and rights-of-way in connection therewith; and to own and operate, maintain, repair, improve, reconstruct, enlarge and extend, subject to the provisions of this title, any of its properties acquired hereunder, all of which, together with the acquisition of such properties are hereby declared to be public purposes;

6-a. To do all things necessary to construct and maintain water transmission and distribution mains and appurtenances thereto to provide wholesale or retail supplies of water to the town of Hanover, village of Silver Creek, and the Seneca Nation of Indians, Cattaraugus reservation upon the adoption of a resolution of the governing body of any such municipality or Indian tribe requesting that the authority sell water to their municipality or tribe and the adoption of a consenting resolution by the governing body of the water utility serving such municipality or tribe should such a water utility then exist;

7. To sell, lease, convey, or otherwise dispose of any distribution system or improvements thereto which the authority may acquire or construct to any municipal corporation or town water district or to the county;

8. To produce, develop, distribute and sell water, water services, facilities and commodities within or without the territorial limits of the district; and to purchase water from any municipal corporation, town water district, person, association or corporation; provided, however, that water may be sold at retail to individual consumers only within the county of Erie and further provided that in exercising the powers granted by this title, the authority shall not sell water in any area which is served by a water system owned or operated by a municipality or special improvement district unless the governing board of such municipality or district shall adopt a resolution requesting the authority to sell water in such served area;

9. To acquire, hold, use, lease, mortgage, sell, transfer and dispose of any property, real, personal or mixed, or interest therein, for its corporate purposes;

10. To make by-laws for the management and regulation of its affairs, and subject to agreements with bondholders, rules for the sale of water and the collection of rents and charges therefor. Such rules may provide for the discontinuance or disconnection of the supply of water for non payment of water rents, rates or charges. The authority shall not discontinue or disconnect the supply of water except in the manner and upon such notice as is required of a water-works corporation pursuant to [subdivision three-a of section eighty-nine-b of the public service law](#). 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 clerk of the county and thereafter published once in two newspapers having a general

circulation in the county. Violation of such rules shall be a misdemeanor punishable by fine, not exceeding fifty dollars, or by imprisonment for not longer than thirty days, or both. Exclusive jurisdiction is hereby conferred upon the local criminal courts of the county, outside the city of Buffalo, which have trial jurisdiction, to hear and determine, subject to the provisions of the criminal procedure law, any violation of this title;

11. With the consent of the county to use the officers, employees, facilities and equipment of the county, paying a proper portion of the compensation or cost;

12. To make contracts and to execute all necessary or convenient instruments, including evidences of indebtedness, negotiable or non-negotiable;

13. To enter on any lands, waterways and premises for the purpose of making surveys, soundings and examinations;

14. To borrow money and to issue negotiable bonds, notes or other obligations and to fund or refund the same, and to provide for the rights of the holders of its obligations;

15. To fix rates and collect charges for the use of the facilities of, or 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 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 depreciation, maintenance, and contingencies and all other obligations and indebtedness of the authority;

16. To enter into cooperative agreements with other water authorities, municipalities, counties, towns, villages, water districts, utility companies, individuals, firms or corporations, within or without the territorial limits of the district for the inter-connection of facilities, the exchange or interchange of services and commodities or for any other lawful purposes necessary or desirable to effect the purposes of this title;

17. To accept grants, loans or contributions from the United States, the state of New York, or any agency or instrumentality of either of them, or the county, or an individual, by bequest or otherwise, and to expend the proceeds for any purposes of the authority;

18. To do all things necessary or convenient to carry out the powers expressly given in this title.

19. To facilitate the determination of the economic practicability of any step contemplated by the authority or of any other fact or matter which the authority is now or may hereafter be authorized and empowered to decide or determine the authority may and in the case of any project involving an expenditure in excess of five hundred thousand dollars must conduct investigations, inquiries or hearings at such place or places as it shall appoint. Such investigations, inquiries or hearings may be held by or before one or more of any officers of the authority or by or before any person or persons appointed as its representative, and when ratified, approved or confirmed by the authority its action shall be and be determined to be the investigation, inquiry or hearing of the authority.

For the purpose of any such investigation, inquiry or hearing and for the purpose of such other action or powers as the authority may be authorized or empowered to take or exercise, it shall have jurisdiction of any and all persons, associations or corporations residing in or acting under and by virtue of the laws of or owning property within the state of New York and shall have the power to compel the attendance of witnesses and the production of any papers, books or other documents, and to administer oaths to all witnesses who may be called before it.

20. Upon the adoption of a resolution by the authority that it intends to acquire or to commence negotiations for

the purpose of acquiring the property or any part thereof, of a public utility corporation, said public utility corporation shall give to the authority and its authorized representatives access to its books, records and accounts, or such portion thereof, as are descriptive of the property proposed to be acquired.

21. At any time after the entry of a judgment as provided in the condemnation law, the authority may make application to the court for an order directing that title to the property described in the proceeding shall vest in the authority in advance of the determination and payment of the final award in condemnation. Upon such application the court shall hear the proofs of the parties to the proceeding respecting the readiness and ability of the authority to pay to the person entitled such compensation with interest as the final order in the proceeding may direct to be paid. If the court shall be satisfied that the authority will be ready and able to pay said compensation with interest when ascertained, and that the person entitled thereto by such proofs and the provisions of this title, is reasonably assured of such payment, the court shall make an order vesting title to the property described in the authority, upon the taking and filing of the oath of office by the commissioners of appraisal, or at any stage of the proceeding thereafter.

Upon the entry of said order with proof of service upon the parties to the proceeding, the authority shall be entitled to enter into possession of the property and to operate the same for its corporate purposes. Such order shall be enforced to obtain delivery of possession of the property in the manner provided for in section seventeen of the condemnation law. [\[FN2\]](#)

22. Upon the vesting of title in the authority of the property described in a condemnation proceeding, or at any time thereafter the authority on notice to the parties to the proceeding may pay to any party or person entitled to an award for the property acquired, in advance of the determination of the final award, a sum of money to be determined by the authority. Such payment shall be made to the parties as their interests shall be determined by the court.

If the authority shall decide to make a partial payment in advance to any party or person entitled to an award, the interest on any sum so decided to be paid in advance shall cease to run on and after a date five days after such party or person shall have been notified by mail or otherwise that the authority is ready to pay the same.

When any such payment in advance shall have been made, the authority upon paying the final award for the property acquired, shall deduct from the total amount allowed as compensation, any sum advanced plus interest thereon from the date of the payment of such advance to the date of the final award in the proceeding.

23. To enter into a contract or contracts with the board of supervisors of Erie county for the acquisition, construction and development of a water supply and distribution system, or any part or parts thereof, on behalf of a county water district, and to contract for the operation and management of such county water district, all as provided in article five-a of the county law and article five-b of the general municipal law. Such water authority shall be deemed the agent of Erie county under any such contract. If such contract shall authorize the water authority to purchase supplies or equipment or to construct public works, such authority shall be subject to all provisions of law to which Erie county would be subject in relation to advertising and awarding any such contracts for supplies, equipment or public works.

[\[FN1\]](#) So in original. Probably should read "covenants".

[\[FN2\]](#) The Condemnation Law was repealed by L.1977, c. 839, § 2, and is succeeded by the Eminent Domain Procedure Law (EDPL).

#### **[§ 1054-a. Deposit required where temporary possession is granted in condemnation proceeding](#)**

Whenever the authority, in any condemnation proceeding for the acquisition of any property, shall make application for temporary possession pursuant to the provisions of section twenty-four of the condemnation law, [\[FN1\]](#) the sum to be fixed by the court for deposit, as a condition of granting such application, shall not exceed ten per centum of the assessed valuation of the real property sought to be acquired in such proceedings as such assessed valuation appears upon the last assessment rolls for county taxes prior to the commencement of such proceeding.

[\[FN1\]](#) The Condemnation Law was repealed by L.1977, c. 839, § 2, and is succeeded by the Eminent Domain Procedure Law (EDPL). For similar provisions, see [EDPL § 402\(B\)\(6\)](#).

### **§ 1055. 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 of New York designated by the authority. The moneys in such accounts shall be paid out on check of the treasurer on requisition by the authority or of such other person or persons as the authority may authorize to make such requisitions. All deposits of such moneys shall, if required by the comptroller or the authority, be secured by obligations of the United States or of the state of New York or of the county of a market value equal at all times to the amount of deposit and all banks and trust companies are authorized to give such security for such deposits. The comptroller and his legally authorized representatives, and the comptroller of the county of Erie, if he so elect, are hereby authorized and empowered from time to time to examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other matters relating to its financial standing. The authority shall have power, notwithstanding the provisions of this section, to contract with the holders of any of its 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.

### **§ 1056. Bonds of the authority**

1. The authority shall have the power and is hereby authorized from time to time to issue its negotiable bonds in conformity with applicable provisions of the uniform commercial code for any of its corporate purposes, including incidental expenses in connection therewith, and to secure the payment of the same by lien of the pledge of the revenues. The authority shall have power from time to time whenever it deems refunding expedient, 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 of its corporate purposes. Except as may be otherwise expressly provided by the authority, every issue of bonds by the authority shall be general obligations payable out of any moneys, earnings or revenues of the authority, subject only to any agreements with the holders of particular bonds pledging any particular moneys, earnings or revenues.

2. The bonds shall be authorized by resolution of the authority and shall bear such date or dates, mature at such time or times not exceeding forty years from their respective dates, bear interest at such rate or rates per annum payable at such times, be in such denominations, be in such form either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America, at such place or places and be subject to such terms of redemption, as such resolution or resolutions may provide. Such bonds of the authority may be sold at public or private sale for such price or prices as the authority shall determine provided, however, that any private sale shall be subject to the approval of the state comptroller. The foregoing provisions shall be applicable to bonds issued by the authority notwithstanding the provisions of any other general, special or local law to the contrary.

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

(a) pledging all or any part of the moneys, earnings, income and revenues derived from all or any part of the properties of the authority to secure the payment of the bonds or of any issue of the bonds subject to such agreements with bondholders as may then exist;

(b) the rates, rentals, fees and other charges to be fixed and collected and the amounts to be raised in each year thereby, and the use and disposition of the earnings and other revenues;

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

(d) limitations on the right of the authority to restrict and regulate the use of the properties in connection with which such bonds are issued;

(e) limitations in the purposes to which the proceeds of sale of any issue of bonds may be applied and pledging such proceeds to secure the payment of the bonds or any issue of the bonds;

(f) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured; 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, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

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

(i) the terms and provisions of any mortgage or trust deed or indenture securing the bonds or under which 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 sixty-six](#) hereof, and limiting or abrogating the right of the bondholders to appoint a trustee under such section or limiting the rights, duties and powers of such trustee;

(k) limitations on the power of the authority to sell or otherwise dispose of its properties;

(l) any other matters, of like or different character which in any way affect the security or protection of the bonds;

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

(n) the protection and enforcement of the rights and remedies of the bondholders;

(o) the obligations of the authority in relation to the construction, maintenance, operation, repairs and insurance of the properties, the safeguarding and application of all moneys and as to the requirements for the supervision and approval of consulting engineers in connection with construction, reconstruction and operation;

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

4. It is the intention of the legislature that any pledge of earnings, revenues or other moneys made by the authority shall be valid and binding from the time when the pledge is made; that the earnings, revenues or other moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

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

6. The authority shall have power out of any funds available therefor to purchase bonds. The authority shall cancel such bonds, subject to and in accordance with agreements with bondholders.

7. In the discretion of the authority, the bonds may be secured by a trust indenture (instead of a resolution) by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company in the state of New York. Such trust indenture may contain any of the provisions which a resolution authorizing bonds may contain.

Notwithstanding any other provisions of this title, any resolution or resolutions authorizing bonds or notes of the authority shall contain a covenant by the authority that it will at all times maintain rates, fees, rentals and other charges sufficient to pay, and that any contracts entered into by the authority for the sale or distribution of water shall contain rates, fees, rentals or other charges sufficient to pay, the cost of operation and maintenance of the properties, the principal of and interest on any obligations issued pursuant to such resolution or resolutions as the same severally become due and payable, and to maintain any reserves or other funds required by the terms of such resolution or resolutions.

#### **§ 1057. Notes of the authority**

The authority shall have power and is hereby authorized to issue negotiable bond anticipation notes in conformity with applicable provisions of the uniform commercial code and may renew the same from time to time but the maximum maturity of any such note, including renewals thereof, shall not exceed five years from the date of issue of such original note. Such notes shall be paid from any moneys of the authority available therefor and not otherwise pledged or from the proceeds of sale of the bonds of the authority in anticipation of which they were issued. The notes shall be issued in the same manner as the bonds and such notes and the resolution or resolutions authorizing the same may contain any provisions, conditions or limitations which the bonds or a bond resolution of the authority may contain. Such notes may be sold, at public or private sale for such price or prices and shall bear interest at such rate or rates per annum as the authority shall determine provided, however, that any private sale shall be subject to the approval of the state comptroller. The foregoing provisions shall be applicable to notes issued by the authority notwithstanding the provisions of any other general, special or local law to the contrary. Such notes shall be as fully negotiable as the bonds of the authority.

The maturity of notes issued by the authority for payments to any party or person entitled to an award in condemnation in advance of the determination of the final award, may be extended beyond five years and until such time as the final award is ascertained and paid.

#### **§ 1058. Duty of authority to maintain and operate**

It shall be the duty of the authority, subject to any limitation on the amount of revenues to be expended for such purpose, to maintain and operate and where necessary to reconstruct its properties.

**§ 1059. Transfer of officers and employees**

Any public officer or employee under civil service, selected by the authority may, with the consent of the commission, board or department 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 shall after such transfer be paid by the authority. But notwithstanding the provisions of this act, any such officers or employees so transferred to the authority, pursuant to the provisions of this section, who are members of or beneficiaries under any existing pension or retirement system, shall continue to have all rights, privileges, obligations and status with respect to such fund, system or systems as are now prescribed by law, but during the period of their employment by the authority, all contributions to any pension or retirement fund or system to be paid by the employer on account of such officers or employees, shall be paid by the authority; and all such officers and employees who have been appointed to positions under the rules and classifications of the personnel officer of the county of Erie shall have the same status with respect thereto after transfer to the authority as they had under their original appointments. It is hereby declared that in the interest of efficiency and insofar as may be practicable, all employees engaged in the operation of any property or properties, except in an executive capacity, at the time such property or properties shall have been acquired by the authority, pursuant to the provisions of this act, [FN1] shall become the employees of the authority. The appointment and promotion of all employees of the authority shall be made in accordance with the provisions of the civil service law (constituting chapter seven of the consolidated laws) and such rules as the personnel officer of the county of Erie may adopt and make applicable to such authority.

[FN1] This title.

**§ 1060. Agreements of the state**

The state of New York does pledge to and agree with the holders of the bonds that the state will not limit or alter the rights hereby vested in the authority to acquire, construct, maintain, operate, reconstruct and improve the properties, to establish and collect the revenues, rates, rentals, fees and other charges referred to in this title and to fulfill the terms of any agreements made with the holders of the bonds, or in any way impair the rights and remedies of the bondholders, until the bonds, together with interest thereon, 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 bondholders, are fully met and discharged.

**§ 1061. State, county and municipalities not liable on bonds**

The bonds and other obligations of the authority shall not be a debt of the state of New York or of the county or of any municipality in the county, and neither the state nor the county nor any municipality in the county shall be liable thereon, nor shall they be payable out of any funds other than those of the authority.

**§ 1062. Bonds legal investments for fiduciaries**

The bonds are hereby made securities in which all public officers and bodies of this state and all municipalities and municipal subdivisions, 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 all other persons whatsoever, except as hereinafter provided, who are now or may hereafter be autho-

rized 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; provided that, notwithstanding the provisions of any other general or special law to the contrary, such bonds shall not be eligible for the investment of funds including capital, of trusts, estates or guardianships under the control of individual administrators, guardians, executors, trustees and other individual fiduciaries. 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 and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized.

### **§ 1063. Exemption from taxes**

1. It is hereby determined that the creation of the authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of the county of Erie and its environs, and is a public purpose, and the authority shall be regarded as performing a governmental function in the exercise of the powers conferred upon it by this title and shall not be required to pay any taxes, special ad valorem levies or special assessments upon any property owned by it or under its jurisdiction, control or supervision or upon its activities, or any filing, recording or transfer taxes in relation to instruments filed, recorded or transferred by it or on its behalf.

2. Any bonds or notes issued pursuant to this title, together with the income therefrom shall be exempt from taxation, except for transfer and estate taxes. The revenues, monies and other properties and the activities of the authority shall be exempt from taxes and governmental fees or charges, whether imposed by the state or any municipality, including real estate taxes, franchise taxes or other excise taxes.

### **§ 1064. Tax contract by the state**

The state of New York covenants with the purchasers and with all subsequent holders and transferees of bonds or notes issued by the authority pursuant to this title, in consideration of the acceptance of and payment for the bonds or notes that the bonds and notes of the authority issued pursuant to this title and the income therefrom, and all moneys, funds and revenues pledged to pay or secure the payment of such bonds or notes, shall at all times be free from taxation except for estate taxes and taxes on transfers by or in contemplation of death.

### **§ 1065. Control by other boards or commissions**

No certificate of convenience and necessity, license, consent or other authorization shall be required to be obtained by the authority or by a water-works corporation from any board, commission or other agency of the state in order that the authority may acquire, lease, own and operate, maintain, improve, extend or enlarge any property or properties referred to in this title, or that any water-works corporation may sell, transfer, or lease its franchise, works or system, or any part thereof to the authority, except that nothing in this section contained shall be construed to deprive the state water power and control commission of any jurisdiction which that commission may now or hereafter have pursuant to the provisions of the conservation law [\[FN1\]](#) (constituting chapter sixty-five of the consolidated laws), or of any jurisdiction which the state commissioner of health may now or hereafter have pursuant to the provisions of article five of the public health law [\[FN2\]](#) (constituting chapter forty-five of the consolidated laws). Neither the state public service commission nor any other board or commission of like character shall, unless expressly authorized hereafter, have jurisdiction over the authority in the management and control of its properties or operations or any power over the regulation of the rates fixed or charges collected by the authority.

[\[FN1\]](#) The Conservation Law was repealed and is succeeded by the Environmental Conservation Law (ECL). See, generally, [ECL § 15-1501 et seq.](#), relating to water supply.

[\[FN2\]](#) Now Article 11 of the Public Health Law.

**§ 1066. Remedies of bondholders**

1. In the event that the authority shall default in the payment of principal of or interest on any issue of the 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 the bonds, the holders of twenty-five per centum in aggregate principal amount of the bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county of Erie 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 purposes herein provided.

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

(a) by suit, action or special proceeding enforce all rights of the bondholders, including the right to require the authority to collect revenues, rates, rentals, fees and other charges adequate to carry out any agreement as to, or pledge of such revenues, rates, rentals, fees and other charges and to require the authority to carry out any other agreements with the holders of such bonds and to perform its duties under this title;

(b) bring suit upon such bonds;

(c) by action or suit in equity, 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 suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds;

(e) declare all such bonds due and payable, and if all defaults shall be made good then with the consent of the holders of twenty-five per centum of the principal amount of such bonds then outstanding, to annul such declaration and its consequences.

3. The supreme court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of bondholders.

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

5. 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 such receiver may enter and take possession of such part or parts of the properties and subject to any pledge or agreement with bondholders shall take possession of all moneys and other property derived from such part or parts of the 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 revenues derived from the properties.

6. Such trustees 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.

#### **§ 1067. Actions**

1. In any case founded upon tort a notice of claim shall be required as a condition precedent to the commencement of an action or special proceeding against the authority or any officer, appointee, agent or employee thereof, and the provisions of [section fifty-e of the general municipal law](#) shall govern the giving of such notice.

2. An action against the 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.

#### **§ 1068. Officers and employees not to be interested in transactions**

It shall be a misdemeanor for any of the members of the authority, or any officer, agent, servant or employee thereof, employed or appointed by them 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 act [\[FN1\]](#) to make.

[\[FN1\]](#) This title.

#### **§ 1069. Contracts**

All contracts, or orders, for work, material or supplies performed or furnished in connection with construction shall be awarded by the authority pursuant to resolution. Such contracts, or orders, for work, material or supplies needed for any particular purpose involving an expenditure for more than five thousand dollars shall be awarded only after inviting sealed bids or proposals therefor. The notice inviting sealed proposals shall be published at least once in a newspaper or trade paper selected by the authority for such purpose, such publication to be at least ten days before the date for the receipt of bids. If the authority shall not deem it for the interest of the authority to reject all bids, it shall award the contract to the lowest bidder, unless the authority shall determine that it is for the public interest that a bid other than the lowest bid should be accepted. In any contract for work, material or supplies, there shall be inserted in the discretion of the authority a provision that additional work may be done or material or supplies furnished for the purpose of completing such contract at an expense not exceeding fifteen per centum of the amount of such contract if such additional work, materials or supplies shall be ordered by the authority. The bidder whose bid is accepted shall give security for the faithful performance of the contract, and such other security as the authority may require, and may be required to maintain for such period as shall be stipulated any construction done under the contract, all in the manner prescribed and required by the authority; and the sufficiency of such security shall, in addition to the justification and acknowledgment, be approved by the authority. All bids or proposals shall be publicly opened by the authority or its duly authorized agent. If the bidder whose bid has been accepted after advertising shall neglect or refuse to accept the contract within five days after written notice that the same has been awarded to him on his bid or proposal, or, if he accepts but does not execute the contract and give proper security the authority shall have the right to declare his deposit forfeited, and thereupon it shall be readvertised and relet as above provided. In case any work shall be abandoned by any contractor, the authority may, if the best interests of the authority be thereby served, adopt on behalf of the authority any or all sub-contracts made by such contractor for such work and all such sub-contractors shall be bound by such adoption if made; and the authority shall in the manner provided herein readvertise and relet the work specified in the original contract exclusive of so much thereof as shall be provided for in the sub-contract or sub-contracts so adopted. No bid shall be accepted from or any contracts awarded to, any person or corporation who is in arrears to the authori-

ty, or the county of Erie upon any debt or contract, or is a defaulter as surety or otherwise upon any obligation of the authority, or the county. Every contract involving an expenditure of more than five thousand dollars when made and entered into as herein provided shall be executed in duplicate, one copy of which shall be held by the authority and one copy of which shall be delivered to the contractor. Upon the adoption of a resolution by a vote of two-thirds of all the members of the authority stating that, for reasons of efficiency or economy, there is need for standardization, purchase contracts for a particular type or kind of equipment, material or supplies of more than five thousand dollars may be awarded by the authority to the lowest responsible bidder furnishing the required security after advertisement for sealed bids therefor in the manner provided in this section. Such resolution shall contain a full explanation of the reasons for its adoption.

#### **§ 1070. Annual report**

The authority shall submit to the board of supervisors of the county, and to the comptroller, within the first month of each fiscal year, a detailed report setting forth the operations and fiscal transactions of the authority during the preceding fiscal year, the financial condition of such authority and a statement of all receipts and expenditures during such year.

#### **§ 1071. Limitation of liability**

Neither the members of the authority, nor any person or persons acting in its behalf, while acting within the scope of their authority, shall be subject to any personal liability resulting from the erection, construction, reconstruction, maintenance or operation of the properties or any of the improvements or from carrying out any of the powers expressly given in this title.

#### **§ 1072. Effect of inconsistent provisions**

In so far as the provisions of this title are inconsistent with the provisions of any other act, general or special, or of any local law, the provisions of this title shall be controlling.

#### **§ 1073. Title not affected if in part unconstitutional or ineffective**

If any section, clause or provision of this title shall be held unconstitutional, or be 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.

END OF DOCUMENT