

Public Authorities

TITLE 13-G
ULSTER COUNTY RESOURCE
RECOVERY AGENCY

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§ 2050-a. Short title. This title shall be known and may be cited as the "Ulster county resource recover agency act".

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§ 2050-b. Definitions. As used or referred to in this title, unless a different meaning clearly appears in the context, the following terms shall have the following meanings:

1. "Agency" means the public benefit corporation created by section two thousand fifty-c of this title, known as the Ulster county resource recovery agency.

2. "Area of operation" means the county of Ulster.

3. "Bonds" means the bonds, notes or other evidences of indebtedness issued by the agency 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.

4. "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 and personal and improved and unimproved, the cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such building or structures may be moved or relocated, the cost of all systems, facilities, machinery, apparatus and equipment, financing charges, interest prior to, during and after construction to the extent not paid or provided for from revenues or other sources, the cost of engineering and architectural surveys, plans and specifications, the cost of consultants and legal services, the cost of lease guarantee, credit enhancement or bond insurance, other expenses necessary or incidental to the construction of such project and the financing of the construction thereof, including the amount authorized in the resolution of the agency providing for the issuance of bonds to be paid into any reserve or other special fund from the proceeds of such bonds and the financing of the placing of any project in operation, including 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 agency.

5. "County" means the county of Ulster.

6. "County legislature" means the legislative body of the county.

7. "Construction" means the acquisition, erection, building, alteration, improvement, increase, enlargement, extension, reconstruction, renovation or rehabilitation of a solid waste management-resource recovery facility; the inspection and supervision thereof; and the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures and other actions incidental thereto.

8. "Governing body" means the members of the agency constituting and acting as the governing body of the agency.

9. "Municipality" means any county, city, town, village, improvement district, or public corporation of the state, or any combination thereof.

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

11. "Project" means any solid waste management-resource recovery facility, the planning, development, financing, construction, operation, or maintenance of which is authorized to be undertaken in whole or in part by the agency pursuant to this title.

12. "Real property" means lands, structures, franchises and interest in lands, 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 interest 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 judgment, mortgages or otherwise.

13. "Resources recovery" means the separation, extraction and recovery of usable materials, energy or heat from solid waste through source separation, recycling centers or other programs, projects or facilities.

14. "Revenues" means all rates, fees, rents, charges and other income derived by the agency from its operation.

15. "Solid waste" means all materials or substances discarded or rejected as being spent, useless, worthless, or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water pollution control facilities or water supply treatment facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition and construction debris and offal, but not including sewage and other highly diluted water-carried materials or substances and those in gaseous form, source, special nuclear or by-product material within the meaning of the Atomic Energy Act of 1954, as amended, or waste which appears on the list of hazardous waste promulgated by the commissioner of environmental conservation pursuant to section 27-0903 of the environmental conservation law.

16. "Solid waste management-resource recovery facility" or "facility" means any facility, plant, works, system, building, structure, improvement, machinery, equipment, fixture or other real or personal property which is to be used, occupied or employed for or is incidental to the collecting, receiving, transporting, storage, processing, or disposal of solid waste or the recovery by any means of any material or energy product or resource therefrom including but not limited to recycling centers, transfer stations, baling facilities, rail haul or maritime facilities, collection vehicles, processing systems, resource recovery facilities, steam and electric generating and transmission facilities, including auxiliary facilities to supplement or temporarily replace such generating facilities, steam distribution and related plants and facilities, sanitary landfills, leachate treatment facilities, landspreading facilities, waste oil storage, reprocessing and recycling facilities, plants and facilities for compacting, composting or pyrolization of solid wastes, incinerators, and other solid waste disposal, reduction or conversion facilities and resource recovery equipment and disposal equipment as defined in subdivisions four and five of section 51-0903 of the environmental conservation law. Any such facility producing either electricity or shaft horsepower and useful thermal energy shall constitute a co-generation facility as defined in subdivision two-a of section two of the public service law.

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

18. "Source separation" means the segregation of recyclable materials from the solid waste stream at the point of generation for separate collection, sale or other disposition.

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§ 2050-c. Ulster county resource recovery agency. 1. A corporation known as the Ulster county resource recovery agency is hereby created for the public purposes and charged with the duties and having the powers provided in this title. The agency shall be a body corporate and politic constituting a public benefit corporation. It shall consist of five members to be appointed by the chairman of the county legislature including one member recommended to the chairman by the minority leader of the county legislature. All members so appointed shall be subject to confirmation by the county legislature. In making appointments of members, the chairman of the county legislature shall give due consideration to the representation of diverse geographical areas. The first members appointed by the chairman of the county legislature shall be appointed for the following terms of office; one for a term ending on December thirty-first, nineteen hundred eighty-seven; two for a term ending on December thirty-first, nineteen hundred eighty-eight; and two for a term ending on December thirty-first, nineteen hundred eighty-nine. Subsequent appointment of members shall be made for a term of three years ending in each case on December thirty-first of the last year of such term. All members shall continue to hold office until their successors are appointed and qualify. Vacancies shall be filled in the manner provided for original appointment. Vacancies occurring otherwise than by expiration of term of office shall be filled for the unexpired terms. 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 agency shall receive no compensation for their services but shall be reimbursed for all their actual and necessary expenses incurred in connection with the carrying out of the purposes of this title. The powers of the agency shall be vested in and be exercised by the governing body at a meeting duly called and held and three members shall constitute a quorum. No action shall be taken except pursuant to the favorable vote of at least three 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 agency shall consist of a chairman, a vice chairman and a treasurer, who shall be members of the agency, and a secretary, who need not be a member of the agency. Such officers shall be appointed by the governing body and shall serve at the pleasure of the governing body. In addition to the secretary, the governing body may appoint and at pleasure remove an attorney, engineer and executive director and such additional officers and employees as it may determine necessary for the performance of the powers and duties of the agency, which positions shall be in the exempt class of civil service and fix and determine their qualifications, duties and compensation, subject to the provisions of the civil service law. 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 office, the amount and sufficiency of which shall be approved by the governing body and the premium therefor shall be paid by the agency.

3. Notwithstanding any inconsistent provisions of any general, special or local law, ordinance, resolution or charter, no officer, member or employee of any municipality or any public benefit corporation within the county or any adjoining county, 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 agency, nor shall service as such member, officer, agent or employee be deemed incompatible or in conflict with such office, membership or employment. Provided, however, that a full time officer, member or employee shall not be compensated in

the aggregate in an amount in excess of such officer's member's or employee's full time compensation without the express approval of the county legislature; and provided, further, however, that no public official elected to his or her office pursuant to the laws of the state or any municipality thereof may serve as a member of the governing body of the agency during his or her term of office.

4. (a) The chairman of the county legislature shall file on or before July first, nineteen hundred eighty-seven, in the office of the secretary of state, a certificate setting forth: (1) the name of the agency; (2) the names of the members appointed by the chairman of the county legislature and their terms of office; and (3) the effective date of this title. The agency 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 agency 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 agency and its corporate existence shall continue until terminated by law, provided, however, that no such law shall take effect so long as the agency 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 agency, all of the rights and properties of the agency then remaining shall pass to and vest in the county.

5. In addition to any powers granted to it by law, the county legislature from time to time may appropriate by resolution sums of money to defray project costs or any other costs and expenses of the agency. Subject to the rights of bondholders, the county legislature may determine if the moneys so appropriated shall be subject to repayment by the agency to the county and, in such event, the manner and time or times for such repayment.

6. It is hereby determined and declared, that the agency 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 agency is and will be performing an essential governmental function in the exercise of the powers conferred upon it by this title.

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§ 2050-d. Transfer of property to agency; acquisition of property by county for agency. 1. The county or any other municipality may give, grant, sell, convey, loan, license the use of or lease to the agency any property or facility which is useful in connection with the exercise by the agency of its powers under this title. Any such gift, grant, sale, conveyance, loan, license or lease shall be upon such terms and conditions, subject to the rights of the holders of any bonds, as the agency and the county or other municipality may agree.

2. The county may acquire by purchase or condemnation real property in the name of the county for any corporate purpose of the agency.

3. Notwithstanding the provisions of any other law, general, special or local, real property acquired by the agency or the county from the state may be used for any corporate purpose of the agency.

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§ 2050-e. Powers of the agency. The agency shall have the power:

1. To sue and be sued;

2. To have a seal and alter the same;

3. To acquire in the name of the agency, hold, sell, lease, mortgage or otherwise dispose of property, real, personal or mixed, or any interest therein, without limitation, for its corporate purposes; provided, however, that in the acquisition of any real property designated as the site for any facility, the agency shall give consideration to the present and any proposed land use character of the area in which the site is to be located and zoning laws or regulations, if any, otherwise generally applicable to such area;

4. To take by eminent domain, subject to the approval of the county legislature in the name of the agency, pursuant to the eminent domain procedure law, within the area of operation any real property required by the agency to carry out the powers granted by this title;

5. To collect, receive, transport, process, dispose of, sell, store, convey, recycle, and deal with, in any lawful manner and way, solid waste and any products or by-products thereof now or hereafter developed or discovered, including any energy generated by the operation of any solid waste management-resource recovery facility. Any such disposal or sale may be effected on such terms and in such manner as the agency may deem proper;

6. To plan, develop and construct projects and to pay the cost thereof and to have the right to contract in relation thereto with municipalities or persons within or without the county and to own and operate, maintain, repair, improve, reconstruct, enlarge, and extend, subject to the provisions of this title, any of its projects acquired or constructed under this title and to sell, lease, mortgage or otherwise dispose of any project or part thereof to any person or public corporation, subject to such conditions and limitations as the agency may determine to be in the public interest;

7. To assist in the planning, development, construction and the financing of the cost of any solid waste management-resource recovery facility to be located in the county whether or not such solid waste management-resource recovery facility is to be owned or operated by the agency, which assistance may include loans to any person or public corporation.

8. Subject to the provisions of any laws or resolutions of the county, to collect or receive from the United States, the state, the county, any other municipality or public corporation or person, solid waste for the purpose of treatment or disposal thereof, with the right of the agency to sell and dispose of any products or by-products (including energy) of such process of treatment or disposal, as the agency may deem proper;

9. Subject to the provisions of any laws or resolutions of the county, to contract with the county, or other municipalities, state agencies, public corporations or persons within or without the county, for the purpose of collecting, receiving, treating and disposing of solid waste including without limitation to contract with persons for the delivery of all solid waste generated within a stated area to a specific solid waste management-resource recovery facility;

10. To make by-laws for the management and regulation of its affairs and, subject to agreements with bondholders, for the regulation of the use of any project or other property of the agency, which by-laws and all amendments thereto, duly certified by the secretary of the agency, shall be filed in the office of the agency and in the office of the clerk of the county, and to provide for the enforcement of such by-laws by legal or equitable proceedings which are or may be provided or authorized by law. In addition, the county legislature shall have power

to prescribe that violations of specific by-laws of the agency shall constitute offenses or infractions and provide for the punishment of violations thereof by civil penalty;

11. With the consent of the chairman of the county legislature, to use officers or employees of the county and to pay a proper portion of compensation or costs for the services for such officers or employees;

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

13. To enter on any lands, waterways and premises within the county for the purpose of making surveys, soundings and examinations, and liability therefor shall not exceed actual damages;

14. To borrow money and to issue bonds and to fund or refund the same, and to provide for the rights of the holders thereof;

15. Subject to any limitations imposed by any contract pursuant to subdivision two of section two thousand fifty-t of this title, to fix and collect rates, rentals, fees and other charges for the use of the facilities of, or services rendered by, or any commodities furnished by, the agency so 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 agency, together with the maintenance of proper reserves therefor, in addition to paying, as the same shall become due, the expenses of operating and maintaining the properties of the agency, together with proper reserves for debt service, depreciation, maintenance and contingencies and all other obligations and indebtedness of the agency;

16. To accept gifts, grants, loans or contributions from the United States, the state or any agency or instrumentality of either of them, or any municipality or from any person, by bequest or otherwise, and to expend the proceeds for any corporate purposes of the agency; and

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

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§ 2050-f. Governmental capacity of the agency and municipalities. The county, other municipalities within the county and the agency in carrying out their respective powers and duties under this title shall be deemed to be acting in a governmental capacity. The construction, operation and maintenance of any project financed in whole or in part by the agency, shall be deemed to be the performance of an essential governmental function by the agency acting in its governmental capacity, whether such project shall be owned or operated by the agency or by any person or other public corporation.

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§ 2050-g. Transfer of officers and employees. Any officer or employee of the county or a municipality under civil service, selected by the agency may, with the consent of the chairman of the county legislature, be transferred to the agency and shall be eligible for such transfer and appointment, without examination, to applicable offices, positions and employment under the agency. The salary or compensation of any officer or employee, after such transfer, shall be paid by the agency. Any such officers or employees so transferred to the agency 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 agency, all contributions to such funds or system to be paid by the employer on account of such officers or employees shall be paid by the agency. All such officers or employees so transferred to the agency who have been appointed to positions under the rules and classifications of the personnel officer of the county shall have the same status with respect thereto after transfer to the agency as they had under their original appointment.

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§ 2050-h. Bonds of the agency. 1. The agency shall have the power and is hereby authorized from time to time to issue bonds, in conformity with applicable provisions of the uniform commercial code, in such principal amounts as it may determine to be necessary to pay the cost of any project or for any other corporate purpose, including incidental expenses in connection therewith. The agency 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 agency may be general obligations secured by the faith and credit of the agency or may be special obligations payable solely out of particular revenues or other moneys as may be designated in the proceedings of the agency under which the bonds shall be authorized to be issued and subject to any agreements with the holders of outstanding bonds pledging any particular revenues or moneys. The agency may also enter into bank loan agreements, lines of credit and other security agreements and obtain for or on its behalf letters of credit in each case for securing its bonds or to provide direct payment of any costs which the agency is authorized to pay.

2. Bonds shall be authorized by resolution of the agency, be in such denominations and bear such date or dates and mature at such time or times, as such resolution may provide, except that notes and any renewals thereof shall mature within five years from the date of the original issuance and bonds shall mature within thirty years from the date of original issuance of any such bond or note. The bonds and notes shall be subject to such terms of redemption, bear interest at such rate or rates payable at such times, be in such form, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms and conditions as such resolution may provide. Bonds may be sold at public or private sale for such price or prices as the agency shall determine. Bonds of the agency shall not be sold by the agency at private sale unless such sale and the terms thereof have been approved in writing by the state comptroller, which such sale is not to the comptroller, or by the state director of the budget, where such sale is to the comptroller. The agency may pay all expenses, premiums and commissions which it may deem necessary or advantageous in connection with the issuance and sale of bonds.

3. 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, other moneys or property, of the agency to secure the payment of the bonds, including but not limited to any contracts, earnings or proceeds of any grant to the agency received from any private or public source;

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

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

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

(e) Limitations on the right of the agency to restrict and regulate the use of the project or part thereof 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, 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 revenues or moneys may be deposited;

(i) The terms and provisions of any trust deed 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 agency may determine which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to section two thousand fifty-i 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 omission to act which may constitute a default in the obligations and duties of the agency 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 agency 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 agency;

(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 agency may determine; and

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

4. In addition to the powers herein conferred upon the agency to secure its bonds and the notes, the agency shall have power in connection with the issuance of bonds and notes to enter into such agreements as the agency may deem necessary, convenient or desirable concerning the use or disposition of its moneys or property including the mortgaging of any such property and the entrusting, pledging or creation of any other security interest in any such moneys or property and the doing of any act, including refraining from doing any act, which the agency would have the right to do in the absence of such agreements. The agency shall have power to enter into amendments of any such agreements within the powers granted to the agency 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 and notes of the agency.

5. 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 agency shall be valid, binding and perfected from the time when such pledge is made or other security interest attaches without any physical delivery of the collateral or further act, and the lien of any such pledge or other security interest shall be valid, binding and perfected against all parties having claims of any kind in tort, contract or perfected against the agency 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.

6. 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 the purposes of the uniform commercial code, subject only to the provisions of the bonds for registration.

7. Neither the members of the agency 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.

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

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§ 2050-i. Remedies of bondholders. Subject to any resolution or resolutions adopted pursuant to paragraph (j) of subdivision three of section two thousand fifty-h of this title:

1. In the event that the agency 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 agency shall fail or refuse to comply with the provisions of this title or shall default in any agreement made with the holders of any issue of bonds, the holders of twenty-five percent in aggregate principal amount of the bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds for the purpose herein provided.

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

(a) By action or proceeding in accordance with the civil practice law and rules, enforce all rights of the bondholders, including the right to require the agency to collect rents, rates and charges adequate to carry out any agreement as to, or pledge of such rents, rates and charges and to require the agency to carry out any other agreements with 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 agency to account as if it were the trustee of an express trust for the holders of such bonds;

(d) By action or proceeding, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds; and

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

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

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

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

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 project 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 project and subject to any pledge or agreement with holders of such bonds, shall take possession of all moneys and other property derived from such part or parts of the project and proceed with any construction thereon or the acquisition of any property, real or personal, in connection therewith that the agency is under obligation to do, and to operate, maintain and reconstruct such part or parts of the project 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 agency 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 project.

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§ 2050-j. State, county and municipalities not liable on agency bonds. Neither the state, the county nor any other municipality or public corporation shall be liable on the bonds of the agency and such bonds shall not be a debt of the state, the county or any other municipality or public corporation and such bonds shall contain on the face thereof, a statement to such effect.

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§ 2050-k. Moneys of the agency. All moneys of the agency from whatever source derived shall be paid to the treasurer of the agency and shall be deposited forthwith in interest-bearing accounts 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 or of the county or any municipality 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 agency 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 agency or any moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds and 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 agency and all banks and trust companies are authorized to give such security for such deposits. Any moneys of the agency not required for immediate use or disbursement may, at the discretion of the agency, 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 agency shall prescribe a system of accounts.

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§ 2050-1. Bonds legal investment for fiduciaries. The bonds of the agency are hereby made securities in which all public officials and bodies of the state and all municipalities, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, investment companies and other persons carrying on a banking business, and administrators, guardians, executors, trustees and other fiduciaries and all other persons whatsoever, who are now or may hereafter be authorized to invest in bonds or other obligations of the state may properly and legally invest funds including capital in their control or belonging to them. The bonds are also hereby made securities which may be deposited with and may be received by all public officers and bodies of this state and all municipalities for any purposes for which the deposit of bonds or other obligations of this state is now or hereafter may be authorized.

Public Authorities

§ 2050-m. Agreement with the state. The state does hereby pledge to and agree with the holders of any bonds issued by the agency pursuant to this title that the state will not alter or limit the rights hereby vested in the agency 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 agency shall have been issued, to establish and collect rates, rents, fees and other charges referred to in this title, to fulfill the terms of any agreement made with or for the benefit of the holders of 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 bondholders, until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged; provided, however, that nothing in this section shall limit the ability of the state to enforce environmental and public health laws. The agency is authorized to include this pledge and agreement of the state in any agreement with bondholders.

Public Authorities

§ 2050-n. Exemption from taxes, assessments and certain fees. 1. It is hereby determined that the creation of the agency and the carrying out of its corporate purposes is in all respects for the benefit of the people of the county and the state and is a public purpose and the agency 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 or assessments upon any property owned by it or under its jurisdiction, control or supervision or upon its activities, or any filing, recording or transfer fees or taxes in relation to instruments filed, recorded or transferred by it or on its behalf. The construction, use, occupation or possession of any property owned by the agency or the county, including improvements thereon, by any person or public corporation under a lease, lease and sublease or any other agreement shall not operate to abrogate or limit the foregoing exemption, notwithstanding that the lessee, user, occupant or person in possession shall claim ownership for federal income tax purposes. The agency shall be deemed a public authority for the purposes of section four hundred twelve of the real property tax law.

2. Any bonds issued pursuant to this title together with the income therefrom as well as the property of the agency shall be exempt from taxes, except for transfer and estate taxes. The state hereby covenants with the purchasers and with all subsequent holders and transferees of bonds issued by the agency pursuant to this title, in consideration of the acceptance of any payment for the bonds, that the bonds of the agency issued pursuant to this title and the income therefrom and all revenues, moneys and other property pledged to secure the payment of such bonds shall at all times be free from taxation, except for transfer and estate taxes.

Public Authorities

§ 2050-o. Actions against agency. 1. Except in an action for wrongful death, no action or special proceeding shall be prosecuted or maintained against the agency 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 agency or of any member, officer, agent or employee thereof, unless (a) a notice of claim shall have been made and served upon the agency within the time limit by and in compliance with section fifty-e of the general municipal law, (b) it shall appear by and as an allegation in the complaint or moving papers that at least thirty days have elapsed since the service of such notice and that adjustment or payment thereof has been neglected or refused, and (c) the action or special proceeding shall be commenced within one year and ninety days after the happening of the event upon which the claim is based. An action against the agency 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. Actions to recover damages for personal injury or injury to property caused by the latent effects of exposure to any substance or combination of substances, in any form, upon or within the body or upon or within property shall be governed by section two hundred fourteen-c of the civil practice law and rules.

2. Wherever a notice of claim is served upon the agency, 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 agency may require any person, presenting for settlement an account or claim for any cause whatever against the agency to be sworn before a member, counsel or an attorney, officer or employee of the agency 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 agency shall have power to settle or adjust all claims in favor of or against the agency.

4. The rate of interest to be paid by the agency 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 borne by such bonds from the due date thereof until paid or otherwise satisfied.

Public Authorities

§ 2050-p. Contracts. All contracts or orders, for work, material or supplies performed or furnished in connection with construction, shall be awarded by the agency pursuant to resolution of the governing body except as hereinafter provided. Such awards, when applicable, shall be made in compliance with the general municipal law. Prior to entering into any contract, the agency shall seek the opinion of the attorney general with respect to conformance of such contract with the anti-trust laws, and of the comptroller with respect to conformance to the general municipal law. The agency may execute any contract within thirty days after such opinions are sought, whether or not they have been received. In any construction contract, the agency may provide a program for the payment of damages for delays and incentive awards in order to encourage timely project completion. An action, suit or proceeding contesting the validity of a contract awarded pursuant to this section, or the validity of the procedures relating to such award, shall be governed by the provisions of subdivision six of section one hundred twenty-w of the general municipal law and the term "municipality" as used in such subdivision six shall mean the agency.

Public Authorities

§ 2050-q. 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 agency 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 agency is empowered by this title to make.

Public Authorities

§ 2050-r. Audit and annual report. In conformity with the provisions of section five of article ten of the state constitution, the accounts of the agency shall be subject to the supervision of the state comptroller. The agency shall annually submit to the governor and state 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 the chairman of the county legislature. The agency 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.

Public Authorities

§ 2050-s. 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 agency 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.

Public Authorities

§ 2050-t. Pledge by county; contracts with municipalities; powers of municipalities. 1. The county is hereby authorized to pledge to and agree with the holders of the bonds that the county will not limit or impair the rights hereby vested in the agency 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 agency shall have been issued, to establish and collect rates, rents, 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 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 interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the bondholders are fully met and discharged.

2. The county and one or more municipalities within the county, or the agency and the county, shall have power to contract from time to time between or among themselves, or among themselves and with the agency, in relation to the collecting, receiving, transporting, storage processing or disposal of solid waste or for the purchase or use of any materials, energy, by-products or residue generated by or resulting from the operation of any solid waste management-resource recovery facility. Any such contract to which the county and any municipality within the county are parties may include provisions stipulating the maximum rates, rentals, fees and other charges to be collected for the use of facilities. Any contract to which the agency and the county are parties may include provisions (a) requiring the periodic delivery to the particular facilities of minimum amounts of solid waste and providing for specified minimum periodic payments whether or not such delivery is made subject to such limitations, exceptions and provisions therein or (b) requiring the county to pay, within appropriations available therefor, such amounts as shall be necessary to assure the continued operation and solvency of the agency, such payments to be determined and paid in such manner and at such times as may be provided in such contract.

3. To further the governmental and public purposes of the agency, including the implementation of any contract or proposed contract contemplated by this title, the county shall have the power to adopt and amend local laws imposing appropriate and reasonable limitations on competition with respect to collecting, receiving, transporting, delivering, storing, processing and disposing of solid waste or the recovery by any means of any material or energy product or resource therefrom, including, local laws requiring that all solid waste generated, originated or brought within their respective boundaries, subject to such exceptions as may be determined to be in the public interest, shall be delivered to a specified solid waste management-resource recovery facility; provided, however, that any such local law enacted by the county shall take precedence over and shall supersede any inconsistent provisions of any local law enacted by a municipality within the county. Any such local law shall be adopted in accordance with the procedure provided by the municipal home rule law, except that no such local law shall be subject to either mandatory or permissive referendum. For purposes of this subdivision, solid waste shall have the meaning specified in this title, but shall not include any scrap or other material of value separated from the waste stream and held for purposes of materials recycling.

4. The county is hereby authorized to resell or otherwise dispose of all or any part of the materials, energy, by-products or residue purchased from the agency pursuant to subdivision two of this section. Any resale or other disposition may be made in such manner as the county may deem proper and upon such terms and conditions as may be agreed upon by the parties thereto.

5. The county and all other municipalities within the county shall have power to perform such other acts, to enter into such other contracts, including contracts between or among themselves, execute such instruments and to undertake such future proceedings as shall be determined necessary or desirable to effectuate the purpose of this title, including the making of gifts, grants, loans or contributions to the agency.

6. Except as otherwise provided by section one hundred twenty-w of the general municipal law, any contract entered into by a municipality pursuant to this section may be for such term or duration, not to exceed twenty-five years, as may be agreed upon by the parties thereto, except that any contract relating to or affecting the security of any project financed in whole or in part by the agency may provide that the same shall remain in full force and effect as long as the bonds issued for such project shall remain outstanding or until adequate provision has been made for the payment or satisfaction thereof.

7. Any contract entered into pursuant to this section to which the agency shall be a party may be pledged by the agency as security for any issue of bonds, and may be assigned, in whole or in part, by the agency, to any public corporation or person which shall construct, purchase, lease or otherwise acquire any solid waste management-resource recovery facility, or part thereof, financed in whole or in part by the agency.

8. Any contract, lease or agreement entered into by the agency pursuant to this title and which provides for the construction of a facility which combusts solid waste, shall provide for the utilization of the best available technology to control the environmental impact of such facility. Such technology may include fabric filtration and dry scrubbers to control particulate and acid gas emissions. Any facility at a minimum shall be constructed and operated in compliance with requirements of the department of environmental conservation. Any such contract, lease or agreement also shall include but not be limited to provisions for:

(a) Monitoring of emissions for toxic air contaminants or surrogates thereof where appropriate to determine permit compliance at least twice during the first year of operation and after any detection of permit violations, and at least annually thereafter; such monitoring to include provisions for use of statistically valid sampling procedures in all monitoring; and

(b) Sampling and testing of ash and dust residues at least semi-annually, pursuant to a method assuring statistical validity, to determine appropriate disposition or disposal based on relative toxicity.

Any such contract, lease or agreement also may include provisions for the payment of up to one dollar and twenty-five cents per ton of solid waste processed at such facility. Such payments shall be apportioned as follows: one dollar or a portion thereof to such town or city in which the facility is located; and twenty-five cents or a portion thereof to such fire district or to such city, for fire protection purposes, in which such facility is located.

Public Authorities

§ 2050-u. Solid waste facility reserve fund. The county legislature may establish a special fund, to be known as solid waste facility reserve fund of the county. There shall be credited in such reserve fund all amounts paid to the county and specifically designated by the payor for deposit in such reserve fund, together with such county moneys as may be appropriated thereto from time to time. Moneys in such reserve fund shall be deposited in interest-bearing accounts and may be appropriated only for the purpose of paying amounts due from the county under the terms of any contract entered into pursuant to this title, for which an insufficient or no provision has otherwise been made, except that upon the adoption of a resolution by at least a two-third vote of the voting strength of the county legislature, all or any portion of the moneys in such reserve fund may be transferred to any other reserve fund established by the county pursuant to the general municipal law. To the extent not inconsistent with the provisions of this section, the management of such reserve fund and the investment of moneys therein shall be subject to the provisions of section six-h of the general municipal law.

Public Authorities

§ 2050-v. Affirmative action. 1. Any contracts entered into pursuant to this title shall contain the following provisions:

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

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

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

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

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

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

be construed to limit the ability of any minority business enterprise to bid on any contract.

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

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

6. Nothing in this section shall be construed to impair the ability of the agency to enter into contracts in accordance with the provisions of the general municipal law.

Public Authorities

§ 2050-w. Transfer of 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, by the county with the 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 agency to the same extent and in the same manner as if the agency had been a party to such application or proceeding from its inception, and the agency 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 agency and shall be assigned and transferred by the county to the agency, 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 agency.

Public Authorities

§ 2050-x. Preference for actions or proceedings against agency. Any action or proceeding to which the agency or the people of the state may be parties, in which any question arises as to the validity of this title, shall be preferred over all other civil causes of action or cases, except election causes of action or cases, in all courts of the state and shall be heard and determined in preference to all other civil business pending therein, except election cases, irrespective of position on the calendar. The same preference shall be granted upon application of the agency or its counsel in any action or proceeding questioning the validity of this title in which the agency may be allowed to intervene. The venue of any such action or proceeding shall be laid in the supreme court of the county.

Public Authorities

§ 2050-y. Separability. If any section, clause or provision in this title shall be held by a court of competent jurisdiction 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.

Public Authorities

§ 2050-z. 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 the county charter or any local law, ordinance or resolution of the county or any 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 agency 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 and the department of health.