

§ 1299. Short title

- This title may be cited as the “Niagara Frontier Transportation Act.”

§ 1299-a. Definitions

- As used or referred to in this title, unless a different meaning clearly appears from the context:
 - **1.** “Authority” shall mean the corporation created by section twelve hundred ninety-nine-c of this title.
 - **2.** “Authority facilities” shall mean the authority’s railroad, omnibus, marine and aviation facilities and operations pursuant to joint service arrangements.
 - **3.** “Comptroller” shall mean the comptroller of the state of New York.
 - **4.** “Equipment” shall mean rolling stock, omnibuses, vehicles, air, marine or surface craft, motors, boilers, engines, wires, ways, conduits and mechanisms, machinery, tools, implements, materials, supplies, instruments and devices of every nature whatsoever used or useful for transportation purposes or for the generation or transmission of motive power including but not limited to all power houses, and all apparatus and all devices for signalling, communications and ventilation as may be necessary, convenient or desirable for the operation of a transportation facility.
 - **5.** “Federal government” shall mean the United States of America, and any officer, department, board, commission, bureau, division, corporation, agency or instrumentality thereof.
 - **6.** “Governor” shall mean the governor of the state of New York.
 - **7.** “Joint service arrangements” shall mean agreements between or among the authority and any common carrier or freight forwarder, the state, any state agency, the federal government, any other state or agency or instrumentality thereof, any public authority of this or any other state, any political subdivision or municipality of the state, or the nation, relating to property, buildings, structures, facilities, services, rates, fares, classifications, divisions, allowances or charges (including charges between operators of railroad, omnibus, marine and aviation facilities), or rules or regulations pertaining thereto, for or in connection with or incidental to transportation in part in or upon railroad, omnibus, marine or aviation facilities located within the district and in part in or upon railroad, omnibus, marine or aviation facilities located outside the district.
 - **8.** “Marine and aviation facilities” shall mean equipment and craft for the transportation of passengers, mail and cargo between points within the district or pursuant to joint service arrangements, by marine craft and aircraft of all types including but not limited to hydrofoils, ferries, lighters, tugs, barges, helicopters, amphibians, seaplanes or other contrivances now or hereafter used in navigation or movement on waterways or in the navigation of or flight in airspace. It shall also mean port facilities in the transportation district including, but not limited to, (a) one or more

docks, elevators, wharves, piers, bulkheads, slips, basins, harbors, railroad connections, side tracks or sidings, freight terminals, warehouses, bridges, tunnels, and areas for storage of cargoes, materials, goods, wares, and merchandise of any kind and for the loading, unloading, interchange or transfer of any such cargoes, materials, goods, wares and merchandise; (b) other buildings, structures, facilities or improvements necessary to accommodate steamships or other vessels and their cargoes or passengers; and (c) all real and personal property, driveways, roads, approaches, mechanical equipment and all appurtenances and facilities either on, above or under the ground which are necessary, convenient or desirable for the development, control and operation of port facilities in the transportation district. It shall also mean any airport facility within the transportation district, including but not limited to any facility or real property necessary, convenient or desirable for the landing, taking off, accommodation or servicing of such aircraft and shall include such facilities, property, structures and appurtenances as may be necessary or convenient in the operation, maintenance, development or improvement of airports including facilities, property, structures, and appurtenances, leased by the Authority to persons, firms or corporations engaged in air transportation or the production or development of materials, goods or equipment for airports or air transportation or in providing facilities for the accommodation, safety or comfort of the traveling public and for purposes related or incidental to one or more of the foregoing purposes. It shall also mean any airport facility within the transportation district or within ten miles of the boundaries thereof.

- **9.** “Omnibus facilities” shall mean motor vehicles, of the type operated by carriers subject to the jurisdiction of the public service commission, engaged in the transportation of passengers and their baggage, express and mail between points within the district or pursuant to joint service arrangements, and equipment, property, buildings, structures, improvements, loading or unloading areas, parking areas or other facilities, necessary, convenient or desirable for the accommodation of such motor vehicles or their passengers, including but not limited to buildings, structures and areas notwithstanding that portions may not be devoted to any omnibus purpose other than the production of revenues available for the costs and expenses of all or any facilities of the authority.
- **10.** “Railroad facilities” shall mean right of way and related trackage, rails, cars, locomotives, other rolling stock, signal, power, fuel, communication and ventilation systems, power plants, stations, terminals, storage yards, repair and maintenance shops, yards, equipment and parts, offices and other real estate or personalty used or held for or incidental to the operation, rehabilitation or improvement of any railroad operating or to operate between points within the district or pursuant to joint service arrangements, including but not limited to buildings, structures, and areas notwithstanding that portions thereof may not be devoted to any railroad purpose other than the production of revenues available for the costs and expenses of all or any facilities of the authority.
- **11.** “Real property” shall mean lands, structures, franchises and interests in land, waters, lands under water, riparian rights and air rights and any and all things and rights included within said term and includes not only fees simple absolute but also any and all lesser interests including but not limited to easements, rights of way, uses,

leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise.

- **12.** “State” shall mean the state of New York.
- **13.** “State agency” shall mean any officer, department, board, commissioner, bureau, division, public benefit corporation, agency or instrumentality of the state.
- **14.** “Transportation facility” shall mean any railroad, omnibus, marine or aviation facility and any person, firm, partnership, association or corporation which owns, leases or operates any such facility or any other facility used for service in the transportation of passengers, United States mail or personal property as a common carrier for hire and any portion thereof and the rights, leaseholds or other interest therein together with routes, tracks, extensions, connections, parking lots, garages, warehouses, yards, storage yards, maintenance and repair shops, terminals, stations and other related facilities thereof, the devices, appurtenances, and equipment thereof and power plants and other instrumentalities used or useful therefor or in connection therewith.
- **15.** “Transportation district” and “district” shall mean the Niagara Frontier transportation district created by section twelve hundred ninety-nine-b of this title.
- **16.** “Niagara Frontier Port Authority” shall mean the corporation continued by a chapter of the laws of nineteen hundred sixty-nine entitled “An act to effect a consolidation of the Niagara Frontier port authority and the Niagara Frontier transportation authority, and to amend the public authorities law and chapter two hundred sixty of the laws of nineteen hundred fifty-seven, entitled ‘An act to designate the Niagara Frontier port authority to receive certain future payments from, and subsequent to July first, nineteen hundred ninety-two, to exercise jurisdiction over the property and assets acquired and held in the state of New York by the Buffalo and Fort Erie public bridge authority, and making other provision with respect to such payments, property and assets’, in relation thereto”.
- **17.** “Nation” shall mean the Seneca Nation of Indians.

§ 1299-b. Niagara Frontier transportation district

- There is hereby created and established a transportation district to be known as the Niagara Frontier transportation district which shall embrace the counties of Erie and Niagara.

§ 1299-c. Niagara Frontier transportation authority

- **1.**
 - **(a)** There is hereby created the “Niagara Frontier transportation authority.” The authority shall be a body corporate and politic constituting a public benefit corporation. The authority shall consist of a chairman, ten other members and shall have two non-voting members as described in paragraphs (b) and (c) of this subdivision appointed by the governor by and with the advice and consent of the senate. The chairman and all members shall be residents of the district. Of the ten members other than the chairman, one shall be appointed upon the written

recommendation of the Erie county executive and one shall be appointed upon the written recommendation of the Erie county legislature. The chairman and each of the members shall be appointed for a term of eight years, provided however, that the chairman first appointed shall serve for a term ending June thirtieth, nineteen hundred seventy-three, and of the eight other members first appointed, one shall serve for a term ending June thirtieth, nineteen hundred sixty-eight, two shall serve for a term ending June thirtieth, nineteen hundred sixty-nine, one shall serve for a term ending June thirtieth, nineteen hundred seventy, two shall serve for a term ending June thirtieth, nineteen hundred seventy-one, one shall serve for a term ending June thirtieth, nineteen hundred seventy-two and one shall serve for a term ending June thirtieth, nineteen hundred seventy-three. The term of one of the members appointed to memberships first created by law after April first, nineteen hundred sixty-nine shall end on June thirtieth, nineteen hundred seventy-four, and the term of the other such member shall end on June thirtieth, nineteen hundred seventy-five. Following the expiration of any term ending on or after June thirtieth, nineteen hundred eighty-seven, each member shall be appointed for a term of five years beginning on the day after the expiration date of such prior term; provided, however, that the term of the member first appointed upon the written recommendation of the Erie county executive and the term of the member first appointed upon the written recommendation of the Erie county legislature shall be for a term ending on June thirtieth, nineteen hundred ninety-six.

- **(b)** The first non-voting member of the authority who shall not be considered in determining a quorum, shall be recommended to the governor by the labor organization representing the plurality of the employees within the authority and shall be a resident of the Niagara Frontier transportation district as described in section twelve hundred ninety-nine-b of this title. Such first non-voting member shall be appointed for a term of five years, provided, however, that if at any time during the term of appointment such non-voting member ceases to be affiliated with the labor organization representing the plurality of employees within the authority, then such labor organization may at any time during such term recommend a new member to the governor who shall serve the remainder of the term. If the local bargaining unit decertifies its existing union affiliation and certifies a new union, the union which represents the plurality of the employees may recommend a new member to the governor who shall serve the remainder of the term. The chairman of the authority, at his or her discretion, may exclude such non-voting member from attending any portion of a meeting of the authority or of any committee held for the purpose of discussing negotiations with labor organizations, pending litigation involving the labor organization, or the investigation, evaluation, or discipline of an employee.
- **(c)** There shall also be a second non-voting member of the authority, who shall not be considered in determining a quorum. The second non-voting member shall be appointed by the governor as a representative of the transit dependent community and/or people with disabilities. The second non-voting member shall be appointed for a term of five years.
- **2.** The members of the authority, including the chairman shall not receive a salary or other compensation. Upon formal adoption of policies and guidelines by the authority, each

member, including the chairman, shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties.

- **3.** A majority of the whole number of members of the authority then in office shall constitute a quorum for the transaction of any business or the exercise of any power of the authority. Except as otherwise specified in this title, for the transaction of any business or the exercise of any power of the authority, the authority shall have power to act by a majority of the members present at any meeting at which a quorum is in attendance.
- **4.** The chairman shall preside over the board and shall establish committees to assist the board in carrying out its duties, including but not limited to a committee on operations and personnel; a committee on finance and audit; and a committee on capital planning. The chairman shall appoint members of the authority to such committees.
- **5.** The authority shall be a “state agency” for the purposes of sections seventy-three and seventy-four of the public officers law.
- **6.** Notwithstanding any inconsistent provisions of this or any other law, general, special or local, no officer or employee of the state, or of any public corporation as defined in the general corporation law, shall be deemed to have forfeited or shall forfeit his office or employment or any benefits provided under the retirement and social security law or under any public retirement system maintained by the state or any of its subdivisions by reason of his acceptance of membership on or chairmanship of the authority; provided, however, a chairman who holds such other public office or employment shall receive no additional compensation for services rendered pursuant to this title, but the members and chairman shall be entitled to reimbursement for their actual and necessary expenses incurred in the performance of such services.
- **7.** The governor may remove any member for inefficiency, neglect of duty or misconduct in office after giving him a copy of the charges against him and an opportunity to be heard, in person or by counsel in his defense, upon not less than ten days’ notice. If any member shall be so removed, the governor shall file in the office of the department of state a complete statement of charges made against such member, and his findings thereon, together with a complete record of the proceedings.
- **8.** The authority shall continue so long as it shall have bonds or other obligations outstanding and until its existence shall be terminated by law. Upon the termination of the existence of the authority, all its rights and properties shall pass to and be vested in the state, except that the Buffalo projects, together with all property and assets held and acquired by the authority or by the Niagara Frontier port authority in connection therewith, shall thereupon become the property of and shall be under the jurisdiction, control and possession of the city of Buffalo. As used herein, the Buffalo projects shall mean (a) the greater Buffalo international airport; (b) the Buffalo municipal piers project formerly owned and operated by the city of Buffalo at the foot of Michigan avenue on the Buffalo harbor, in the city of Buffalo; and (c) the Buffalo small boat harbor project formerly owned and operated by the city of Buffalo for the mooring of small craft and boats, located on Fuhrmann boulevard and the Buffalo harbor, in the city of Buffalo.
- **9.** Notwithstanding the provisions of paragraph eight of this section or any other provisions of law, the authority may purchase and the city of Buffalo may sell its reversionary interests in any of the projects mentioned in paragraph eight of this section and in such event, upon termination of the authority by law, any project so acquired shall revert to and become the property of the state.

§ 1299-d. Purposes of the authority

- **1.** The purposes of the authority shall be the continuance, further development and improvement of transportation and other services related thereto within the Niagara Frontier transportation district, including but not limited to such transportation by railroad, omnibus, marine and air, in accordance with the provisions of this title. It shall be the further purpose of the authority to develop and implement a unified mass transportation policy for such district.
- **2.** It is hereby found and declared that such purposes are in all respects for the benefit of the people of the state of New York and the authority shall be regarded as performing an essential governmental function in carrying out its purposes and in exercising the powers granted by this title.

§ 1299-e. General powers of the authority

- Except as otherwise limited by this title, the authority shall have power:
 - **1.** To sue and be sued;
 - **2.** To have a seal and alter the same at pleasure;
 - **3.** To borrow money and issue negotiable notes, bonds or other obligations and to provide for the rights of the holders thereof;
 - **4.** To invest any funds held in reserve or sinking funds, or any monies not required for immediate use or disbursement, at the discretion of the authority, in obligations of the state or the United States government or obligations the principal and interest of which are guaranteed by the state or the United States government; or in certificates of deposit of banks or trust companies; or in bank or trust accounts of banks in this state, secured by obligations of the United States or of the state of New York of a market value equal at all times to the amount of the deposit;
 - **5.** To make and alter by-laws for its organization and internal management, and rules and regulations governing the exercise of its powers and the fulfillment of its purposes under this title;
 - **6.** To enter into contracts and leases and to execute all instruments necessary or convenient;
 - **7.** To acquire, hold and dispose of real or personal property in the exercise of its powers;
 - **8.** To appoint such officers and employees as it may require for the performance of its duties, and to fix and determine their qualifications, duties, and compensation and to retain or employ counsel, auditors, engineers and private consultants on a contract basis or otherwise for rendering professional or technical services and advice; such counsel, auditors, engineers, and private consultants, officers and employees may not be a member of the authority;
 - **9.**
 - **(a)** Notwithstanding section one hundred thirteen of the retirement and social security law or any other general or special law, the authority and any of its

subsidiary corporations may continue or provide to its affected officers and employees any retirement, disability, death or other benefits provided or required for railroad personnel pursuant to federal or state law. Notwithstanding any provisions of the civil service law, no officer or employee of a subsidiary corporation, of the authority, other than a public benefit subsidiary corporation, shall be a public officer or a public employee;

- **(b)** The authority and any of its public benefit subsidiary corporations may be a “participating employer” in the New York state employees’ retirement system with respect to one or more classes of officers and employees of such authority or any such public benefit subsidiary corporation, as may be provided by resolution of such authority or any such public benefit subsidiary corporation, as the case may be, or any subsequent amendment thereof, filed with the comptroller and accepted by him pursuant to section thirty-one of the retirement and social security law. In taking any action pursuant to this paragraph (b), the authority and any of its public benefit subsidiary corporations shall consider the coverages and benefits continued or provided pursuant to paragraph (a) of this subdivision;
- **10.** To make plans, surveys, and studies necessary, convenient or desirable to the effectuation of the purposes and powers of the authority and to prepare recommendations in regard thereto;
- **11.** To enter upon such lands, waters or premises as in the judgment of the authority may be necessary, convenient or desirable for the purpose of making surveys, soundings, borings and examinations to accomplish any purpose authorized by this title, the authority being liable for actual damage done;
- **12.** The authority may conduct investigations and hearings in the furtherance of its general purposes, and in aid thereof have access to any books, records or papers relevant thereto; and if any person whose testimony shall be required for the proper performance of the duties of the authority shall fail or refuse to aid or assist the authority in the conduct of any investigation or hearing, or to produce any relevant books, records or other papers, the authority is authorized to apply for process of subpoena, to issue out of any court of general original jurisdiction whose process can reach such person, upon due cause shown;
- **12-a.** By a certificate filed in its office, from time to time to delegate to any member, officer or employee of the authority the power to conduct any investigation or hold any hearing which the authority is authorized or required to conduct or to hold by any provision of this title; and the person so designated shall have all of the powers of the authority in the conduct of such investigation or the holding of such hearing;
- **13.** To appoint or designate one or more persons for the purpose of enforcing rules and regulations established by the authority, and to compel the observance of law and order on the properties, facilities and improvements of the authority for the protection and administration of such property, facilities and improvements, and the traveling public using such facilities. Each person as and when so appointed or designated shall be known as (a) a “Niagara frontier transportation authority security officer or patrolman” and shall be a peace officer as set forth in subdivision forty-five of [section 2.10 of the criminal procedure law](#), or a police officer within the purview of subdivision thirty-four of [section 1.20 of the criminal procedure law](#) or (b) a “ticket

inspector” and shall not be a peace officer or a police officer but, when so designated or appointed, shall be authorized to issue and serve appearance tickets pursuant to [section 150.20 of the criminal procedure law](#) with respect to violations of rules and regulations so established.

- **13-a.** To make application to the Foreign-Trade Zones Board established by the act of congress, approved June eighteenth, nineteen hundred thirty-four, entitled “An act to provide for the establishment, operation and maintenance of foreign trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes”, for a grant to such authority of the privilege of establishing, operating and maintaining a foreign-trade zone on premises located within the transportation district of the authority, pursuant to the provisions of such act, and if such application be granted, to accept such grant and to establish, operate and maintain such zone in accordance with state and federal law; and to enter into contracts or leases covering all arrangements involving the establishment, operation and maintenance of such zones with and within the counties of Erie and Niagara which counties are hereby authorized to enter into contracts and leases with the authority subject to such rules and regulations as promulgated by federal authority.
- **14.** To do all things necessary, convenient or desirable to carry out its purposes and for the exercise of the powers granted in this title.

§ 1299-eee. Transit adjudication bureau

- **1.** Establishment. There is hereby created in the authority a transit adjudication bureau. The head of such bureau shall be the director, who shall be appointed by the chairman of the authority. The director may delegate the powers and duties conferred upon the director by this section to such qualified officers and employees of the bureau as he may designate.
- **2.** Hearing officers. The chairman of the authority shall appoint hearing officers who shall preside at hearings for the adjudication of charges of transit infractions, as hereinafter defined, and who, as provided below, may be designated to serve on the appeals board of the bureau. Every hearing officer shall have been admitted to the practice of law in this state for a period of at least five years, and shall be compensated for his services on a per diem basis determined by the bureau.
- **3.** Jurisdiction. The bureau shall have, with respect to acts or incidents in or on the transit facilities of the authority, non-exclusive jurisdiction over violations of the rules which may from time to time be established by the authority. Matters within the jurisdiction of the bureau shall be known for purposes of this section as transit infractions. Nothing herein shall be construed to divest jurisdiction from any court now having jurisdiction over any criminal charge relating to any act committed in a transit facility, or to impair the ability of a police officer to conduct a lawful search of a person in a transit facility. The criminal court within which jurisdiction the transit authority shall operate transit facilities shall continue to have jurisdiction over any criminal charge brought for violation of the rules of the authority, as well as jurisdiction relating to any act which may constitute a crime or an offense under any law of the state of New York or any municipality or political subdivision thereof and which may also constitute a violation of such rules.
- **4.** General powers. The bureau shall have the following functions, powers and duties:

- **a.** To accept pleas (whether made in person or by mail) to, and to hear and determine, charges of transit infractions within its jurisdiction;
- **b.** To impose civil penalties not to exceed a total of two hundred fifty dollars for any transit infraction within its jurisdiction, in accordance with a penalty schedule established by the authority;
- **c.** In its sole discretion, to suspend or forgive penalties or any portion of penalties imposed on the condition that the respondent voluntarily agrees to perform and actually does satisfactorily perform unpaid services on transit facilities as assigned by the authority, such as, without limitation, cleaning of rolling stock;
- **d.** To adopt, amend and rescind rules and regulations not inconsistent with any applicable provision of law to carry out the purposes of this section, including but not limited to rules and regulations prescribing the internal procedures and organization of the bureau, the manner and time of entering pleas, the conduct of hearings, and the amount and manner of payment of penalties;
- **e.** To enter judgments and enforce them, without court proceedings, in the same manner as the enforcement of money judgments in civil actions, as provided below;
- **f.** To compile and maintain complete and accurate records relating to all charges and dispositions, which records shall be deemed exempt from disclosure under the freedom of information law as records compiled for law enforcement purposes;
- **g.** To apply to a court of competent jurisdiction for enforcement of any decision or order issued by such bureau or of any subpoena issued by a hearing officer as provided in paragraph d of subdivision seven of this section;
- **h.** To enter into contracts with other government agencies, with private organizations, or with individuals to undertake on its behalf such functions as data processing, debt collections, mailing, and general administration, as the director deems appropriate, except that the conduct by hearing officers of hearings and of appeals may not be performed by outside contractors; and
- **i.** To accept payment of penalties and to remit same to the authority.
- **5.** Notices of violation. The bureau shall prepare and distribute notices of violation in blank to the Niagara Frontier transportation authority security officer, ticket inspector, and any other person empowered by law, rule and regulation to serve such notices. The form and wording of the notice of violation shall be prescribed by the director, and it may be the same as any other notice of violation or summons form already in use if said form meets the requirements hereof. The notice of violation may include provisions to record information which will facilitate the identification and location of respondents, including but not limited to name, address, telephone numbers, date of birth, social security number if otherwise permitted by law, place of employment or school, and name and address of parents or guardian if a minor. Notices of violation shall be served by delivering the notice within the state to the person to be served. A copy of each notice of violation served hereunder shall be filed and retained by said bureau, and shall be deemed a record kept in the ordinary course of business, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained herein. Said notice of violation shall contain information advising the person charged of the manner and the time within which such person may either admit or deny the offense charged in the notice. Such notice of violation shall also contain a warning to advise the person charged that failure to plead in the manner and within the

time stated in the notice may result in a default decision and order being entered against such person.

- **6. Defaults.** Where a respondent has failed to plead within the time allowed by the rules of said bureau or has failed to appear on a designated hearing date or a subsequent date following an adjournment, such failure to plead or appear shall be deemed, for all purposes, to be an admission of liability and shall be grounds for rendering a default decision and order imposing a penalty in such amount as may be prescribed by the authority.
- **7. Hearings.**
 - **a.** Whenever a person charged with a transit infraction returnable to the bureau enters a plea of not guilty, the bureau shall advise such person personally, or by registered or certified mail, of the date on which he or she must appear to answer the charge at a hearing. The form and content of such notice of hearing shall be prescribed by the director, and shall contain a warning to advise the person so pleading that failure to appear on the date designated, or any subsequent adjourned date, shall be deemed for all purposes, an admission of liability, and that a default judgment may be rendered and penalty may be prescribed.
 - **b.** Every hearing for the adjudication of a charge of a transit infraction hereunder shall be held before a hearing officer in accordance with the rules and regulations promulgated by the bureau.
 - **c.** The hearing officer shall not be bound by the rules of evidence in the conduct of the hearing, except rules relating to privileged communications.
 - **d.** The hearing officer when the defendant refuses to stipulate to the contents of the notice of violation, unless the hearing officer determines that the notice of violation should be dismissed, shall require the person who served the petition to attend the hearing and may issue subpoenas to compel the appearance of that person or of other persons to give testimony, and issue subpoenas duces tecum to compel the production for examination or introduction into evidence of any book, paper or other thing relevant to the charges.
 - **e.** In the case of a refusal to obey a subpoena, the bureau may make application to the Supreme Court pursuant to section twenty-three hundred eight of the civil practice law and rules, for an order requiring such appearance, testimony or production of evidence.
 - **f.** The bureau shall make and maintain a sound recording or other record of every hearing.
 - **g.** After due consideration of the evidence and arguments, the hearing officer shall determine whether the charges have been established. No charge may be established except upon clear and convincing evidence. Where the charges have not been established, an order dismissing the charges shall be entered. Where a determination is made that a charge has been established or if an answer admitting the charge has been received, the hearing officer shall set a penalty in accordance with the penalty schedule established by the authority, and an appropriate order shall be entered in the records of the bureau. The respondent shall be given notice of such entry in person or by mail. This order shall constitute the final determination of the hearing officer, and for purposes of review it shall be deemed to incorporate any intermediate determinations made by said officer in the course of the proceeding. When no appeal is filed this order shall be the final order of the bureau.

- **8. Administrative and judicial review.**
 - **a.** There shall be appeals boards within the bureau which shall consist of three or more hearing officers, as the director shall determine. The director shall select a chairman for each appeals board from the members so appointed. No hearing officer may sit on an appeals board considering an appeal from a determination made by said hearing officer.
 - **b.** A party aggrieved by a final determination of a hearing officer may obtain a review thereof by serving upon the bureau within thirty days of the sending of the notice of entry of such order a notice of appeal setting forth the reasons why the determination should be reversed or modified. There shall be no interlocutory appeals.
 - **c.** An appeal from a final determination of a hearing officer shall be submitted to the appeals board, which shall have power to review the facts and the law, but shall not consider any evidence which was not presented to the hearing officer, and shall have power to reverse or modify any judgment appealed from for error of fact or law.
 - **d.** Appeals shall be made without the appearance of the appellant and appellant's attorney unless the presence of either or both are requested by the appellant, appellant's attorney, or the appeals board. Within twenty days after a request for an appearance, made by the appellant, appellant's attorney or the board, the bureau shall advise the appellant or appellant's attorney, either personally or by registered or certified mail, of the date on which he or she shall appear. The appellant shall be notified in writing of the decision of the appeals board.
 - **e.** A party may request and obtain a record of the proceedings resulting in a determination for which an appeal is sought, but the party shall pay to the bureau the cost of providing such record. When a record is timely requested for the purpose of preparing an appeal, the bureau shall not thereafter cause the appeal to be heard or submitted less than ten days after the delivery or mailing of the record to appellant or appellant's attorney.
 - **f.** The service of a notice of appeal shall not stay the enforcement of an order appealed from unless the appellant shall have posted a bond in the amount of penalties imposed in the order appealed from at the time of, or before, the service of such notice.
 - **g.** No determination of a hearing officer which is appealable under the provisions of this section shall be reviewed in any court unless an appeal has been filed and determined in accordance with this subdivision. When an appeal has been filed, the order of the appeals board shall be the final order of the bureau. Judicial review may be sought pursuant to article seventy-eight of the civil practice law and rules.
- **9. Enforcement of judgments.**
 - **a.** The bureau shall have the power to enforce its final decisions and orders imposing civil penalties for violations of laws, rules and regulations enforced by it as if they were money judgments, without court proceedings, in the manner described herein.
 - **b.** Any final order of the bureau imposing a civil penalty, whether the adjudication was had by hearing or upon default or otherwise, shall constitute a judgment rendered by the bureau which may be entered in the county court of Erie or Niagara county or any other place provided for the entry of civil judgments within the state, provided that no proceeding for judicial review shall be pending and the time for initiation of such proceeding shall have expired, and may be enforced without court proceedings in the same manner as the enforcement of money judgments entered in civil actions.

Any final order shall be a bar to any criminal proceeding for conduct upon which the order was based.

- **c.** Notwithstanding the foregoing provisions, before a judgment based upon a default may be so entered the bureau must have attempted to notify the respondent by first class mail, in such form as the bureau may direct: (i) of the default decision and order and the penalty imposed; (ii) that a judgment will be entered in the county court of Erie or Niagara county or any other place provided for the entry of civil judgments within the state; and (iii) the entry of such judgments may be avoided by requesting a stay of default for good cause shown and either requesting a hearing or entering a plea pursuant to the rules of the bureau within thirty days of the mailing of such notice.
- **10.** Funds. All penalties collected pursuant to the provisions of this section shall be paid to the authority.

§ 1299-f. Special powers of the authority

- In order to effectuate the purposes of this title:
 - **1.** The authority may acquire, by purchase, gift, grant, transfer, contract or lease, any transportation facility, wholly or partially within the Niagara Frontier transportation district or any part thereof, or the use thereof, and may enter into any joint service arrangements as hereinafter provided. Any such acquisition or joint service arrangement shall be authorized only by resolution of the authority approved by not less than a majority of the whole number of members of the authority then in office. In addition to and not in limitation of any other power conferred upon the authority by the provisions of this title, the authority is hereby empowered and authorized in respect of any property and assets at any time owned or held by, or under the jurisdiction of, the Buffalo and Fort Erie public bridge authority, to accept and receive any such interest therein as it may have been or may hereafter be designated by the state by law to receive, and in respect thereof, except as otherwise provided by the designating statute, it shall have and exercise all of the powers and jurisdiction herein conferred upon it in respect of any other property, rights, assets, facilities and projects in any other manner acquired or from any other source received by it pursuant to the provisions of this title.
 - **2.** The authority may on such terms and conditions as the authority may determine necessary, convenient or desirable itself establish, construct, effectuate, operate, maintain, renovate, improve, extend or repair any such transportation facility, or may provide for such establishment, construction, effectuation, operation, maintenance, renovation, improvement, extension or repair by contract, lease, or other arrangement on such terms as the authority may deem necessary, convenient or desirable with any person, including but not limited to any common carrier or freight forwarder, the state, any state agency, the federal government, any other state or agency or instrumentality thereof, any public authority of this or any other state, any political subdivision or municipality of the state, or the nation. In connection with the operation of any such transportation facility, the authority may establish, construct, effectuate, operate, maintain, renovate, improve, extend or repair or may provide by contract, lease or other arrangement for the establishment, construction, effectuation, operation, maintenance, renovation, improvement, extension or repair of any related services and

activities it deems necessary, convenient or desirable, including but not limited to the transportation and storage of freight and the United States mail, feeder and connecting transportation, parking areas, transportation centers, stations and related facilities.

- **3.** The authority may establish, levy and collect or cause to be established, levied and collected and, in the case of a joint service arrangement, join with others in the establishment, levy and collection of such fares, tolls, rentals, rates, charges and other fees as it may deem necessary, convenient or desirable for the use and operation of any transportation facility and related services operated by the authority or by a subsidiary corporation of the authority or under contract, lease or other arrangement, including joint service arrangements, with the authority. Any such fares, tolls, rentals, rates, charges or other fees for the transportation of passengers shall be established and changed only if approved by resolution of the authority adopted by not less than a majority of the whole number of members of the authority then in office and only after a public hearing, provided however, that fares, tolls, rentals, rates, charges or other fees for the transportation of passengers on any transportation facility which are in effect at the time that the then owner of such transportation facility becomes a subsidiary corporation of the authority or at the time that operation of such transportation facility is commenced by the authority or is commenced under contract, lease or other arrangement including joint service arrangements, with the authority may be continued in effect without such a hearing. Such fares, tolls, rentals, rates, charges and other fees shall be established as may in the judgment of the authority be necessary to maintain the combined operations of the authority and its subsidiary corporations on a self-sustaining basis. The said operations shall be deemed to be on a self-sustaining basis as required by this title, when the authority is able to pay or cause to be paid from revenue and any other funds or property actually available to the authority and its subsidiary corporations (a) as the same shall become due, the principal of and interest on the bonds and notes and other obligations of the authority and of such subsidiary corporations, together with the maintenance of proper reserves therefor, (b) the cost and expense of keeping the properties and assets of the authority and its subsidiary corporations in good condition and repair, and (c) the capital and operating expenses of the authority and its subsidiary corporations. The authority may contract with the holders of bonds and notes with respect to the exercise of the powers authorized by this section.
- **4.** The authority may establish and, in the case of joint service arrangements, join with others in the establishment of such schedules and standards of operations and such other rules and regulations including but not limited to rules and regulations governing the conduct and safety of the public as it may deem necessary, convenient or desirable for the use and operation of any transportation facility and related services operated by the authority or under contract, lease or other arrangement, including joint service arrangements, with the authority. Such rules and regulations governing the conduct and safety of the public shall be filed with the department of state in the manner provided by section one hundred two of the executive law. In the case of any conflict between any such rule or regulation of the authority governing the conduct or safety of the public and any local law, ordinance, rule or regulation, such rule or regulation of the authority shall prevail. Violation of any such rule or regulation of the authority governing the conduct or the safety of the public in or upon any facility

of the authority shall constitute an offense and shall be punishable by a fine not exceeding fifty dollars or imprisonment for not more than thirty days or both, or may in the alternative be designated a transit infraction punishable by the imposition by the transit adjudication bureau established pursuant to the provisions of this title of a civil penalty in an amount for any one violation of not to exceed two hundred fifty dollars, exclusive of interest or costs assessed thereon, in accordance with a schedule of such penalties as may from time to time be established by the authority. There shall be no penalty or increment in fine by virtue of a respondent's timely exercise of his right to a hearing or appeal. The rules may provide, in addition to any other sanctions, for the confiscation of tokens, tickets, cards or other fare media that have been forged, counterfeited, improperly altered or transferred, or otherwise used in a manner inconsistent with such rules.

- **5.** The authority may acquire, hold, own, lease, establish, construct, effectuate, operate, maintain, renovate, improve, extend or repair any of its facilities through, and cause any one or more of its powers, duties, functions or activities to be exercised or performed by, one or more wholly owned subsidiary corporations of the authority and may transfer to or from any such corporation, or between such corporations, any moneys, real property or other property or the services of any officers, employees or consultants for any of the purposes of this title. The directors or members of each such subsidiary corporation shall be the same persons holding the offices of members of the authority. Each such subsidiary corporation and any of its property, functions and activities shall have all of the privileges, immunities, tax exemptions and other exemptions of the authority and of the authority's property, functions and activities. Each such subsidiary corporation shall be subject to the restrictions and limitations to which the authority may be subject. Each such subsidiary corporation shall be subject to suit in accordance with section twelve hundred ninety-nine-p of this title. The employees of any such subsidiary corporation, except those who are also employees of the authority, shall not be deemed employees of the authority.
- If the authority shall determine that one or more of its subsidiary corporations should be in the form of a public benefit corporation, it shall create each such public benefit corporation by executing and filing with the secretary of state a certificate of incorporation, which may be amended from time to time by filing, which shall set forth the name of such public benefit subsidiary corporation, its duration, the location of its principal office, and any or all of the purposes of acquiring, owning, leasing, establishing, constructing, effectuating, operating, maintaining, renovating, improving, extending or repairing one or more facilities of the authority. Each such public benefit subsidiary corporation shall be a body politic and corporate and shall have all those powers vested in the authority by the provisions of this title which the authority shall determine to include in its certificate of incorporation except the power to contract indebtedness.
- Any other provision of law to the contrary notwithstanding the authority may elect to maintain consolidated records of account for itself and its subsidiary corporations and to report on a consolidated basis with regard to the moneys and activities of the authority and its subsidiary corporations, and the authority shall not be required to keep separate records of account for or to report separately with regard to moneys or activities of any of its subsidiary corporations or of the authority itself apart from its

subsidiary corporations or with regard to transfers of property or services between the authority and its subsidiary corporations or between said subsidiary corporations.

- The Niagara Frontier port authority shall be deemed to be a subsidiary corporation for the purposes of this subdivision.
- Whenever any state, political subdivision, municipality, commission, agency, officer, department, board, division or person is authorized and empowered for any of the purposes of this title to co-operate and enter into agreements with the authority such state, political subdivision, municipality, commission, agency, officer, department, board, division or person shall have the same authorization and power for any of such purposes to co-operate and enter into agreements with a subsidiary corporation of the authority.
- **6.** The authority, in its own name or in the name of the state, may apply for and receive and accept grants of property, money and services and other assistance offered or made available to it by any person, government or agency whatever, which it may use to meet capital or operating expenses and for any other use within the scope of its powers, and to negotiate for the same upon such terms and conditions as the authority may determine to be necessary, convenient or desirable.
- **7.** The authority may do all things it deems necessary, convenient or desirable to manage, control and direct the maintenance and operation of transportation facilities, equipment or real property operated by or under contract, lease or other arrangement with the authority. Except as hereinafter specially provided, no municipality or political subdivision, including but not limited to a county, city, village, town or school or other district shall have jurisdiction over any facilities of the authority or any of its activities or operations. The local laws, resolutions, ordinances, rules and regulations of a municipality or political subdivision, heretofore or hereafter adopted, conflicting with this title or any rule or regulation of the authority, shall not be applicable to the activities or operations of the authority, or the facilities of the authority, except such facilities that are devoted to purposes other than transportation purposes. Each municipality or political subdivision, including but not limited to a county, city, village, town or district in which any facilities of the authority are located shall provide for such facilities police, fire and health protection services of the same character and to the same extent as those provided for residents of such municipality or political subdivision.
- The jurisdiction, supervision, powers and duties of the department of transportation of the state under the transportation law shall not extend to the authority in the exercise of any of its powers under this title. The authority may agree with such department for the execution by such department of any grade crossing elimination project or any grade crossing separation reconstruction project along any railroad facility operated by the authority or by one of its subsidiary corporations or under contract, lease or other arrangement with the authority. Any such project shall be executed as provided in article ten of the transportation law and the railroad law, respectively, and the costs of any such project shall be borne as provided in such laws, except that the authority's share of such costs shall be borne by the state.

§ 1299-g. Acquisition and disposition of real property

- **1.** In addition to the powers provided in section twelve hundred ninety-nine-f of this title to acquire transportation facilities, equipment and real property, the authority may acquire, by condemnation pursuant to the condemnation law, any real property it may deem necessary, convenient or desirable to effectuate the purpose of this title, provided however, that any such condemnation proceedings shall be brought only in the supreme court and the compensation to be paid shall be ascertained and determined by the court without a jury. Notwithstanding the foregoing provisions of this subdivision one, no real property may be acquired by the authority by condemnation for purposes other than a transportation facility unless the governing body of the city, village or town in which such real property is located shall first consent to such condemnation.
- **2.** Nothing herein contained shall be construed to prevent the authority from bringing any proceedings to remove a cloud on title or such other proceedings as it may, in its discretion, deem proper and necessary or from acquiring any such property by negotiation or purchase.
- **3.** Where a person entitled to an award in the proceedings to condemn any real property for any of the purposes of this title remains in possession of such property after the time of the vesting of title in the condemnor, the reasonable value of his use and occupancy of such property subsequent to such time as fixed by agreement or by the court in such proceedings or by any court of competent jurisdiction shall be a lien against such award subject only to the liens of record at the time of vesting of title in the condemnor.
- **4.** Title to all property acquired under this act shall vest in the authority.
- **5.** The authority may, whenever it determines that it is in the interest of the authority, dispose of any real property or property other than real property, which it determines is not necessary, convenient or desirable for its purposes. Provided, however, that the authority shall provide the county, city, town, and village in which the real property is situated with sixty days notice prior to offering such property for disposition or sale.
- **6.** The authority may, whenever it shall determine that it is in the interest of the authority, rent, lease or grant easements or other rights in, any land or property of the authority.

§ 1299-gg. Acquisition and disposition of real property by department of transportation.

- If funds are made available by the authority for the payment of the cost and expense of the acquisition thereof, the department of transportation of the state of New York, when requested by the authority, may acquire such real property in the name of the state as may be determined from time to time by the authority as being necessary, convenient or desirable to effectuate the purposes of this title, may remove the owner or occupant thereof where necessary and obtain possession and, when requested by the authority, may dispose of any real property so acquired, all according to the procedure provided in section thirty of the highway law. The authority shall have the right to possess and use for its corporate purposes all such real property so acquired. Claims for the value of the property appropriated and for legal damages caused by any such appropriation shall be adjusted and determined by such department with the approval of the authority or by the court of claims as provided in section thirty of the highway law. When a claim has been filed with the court

of claims, the claimant shall cause a copy of such claim to be served upon the authority and the authority shall have the right to be represented and heard before such court. All awards and judgments arising from such claims shall be paid out of moneys of the authority. No real property may be acquired pursuant to the provisions of this section for purposes other than a transportation facility unless the governing body of the city, village or town in which such real property is located shall first consent to such acquisition.

§ 1299-h. Co-operation and assistance of other agencies—

- **1.** To avoid duplication of effort and in the interests of economy, the authority may make use of existing studies, surveys, plans, data and other materials in the possession of any state agency or any municipality or political subdivision of the state. Each such agency, municipality or subdivision is hereby authorized to make the same available to the authority and otherwise to assist it in the performance of its functions. At the request of the authority, each such agency, municipality or subdivision which is engaged in highway or other transportation activities or in land use or development planning, or which is charged with the duty of providing or regulating any transportation facility or any other public facility, is further authorized to provide the authority with information regarding its plans and programs affecting the transportation district so that the authority may have available to it current information with respect thereto. The officers and personnel of such agencies, municipalities or subdivisions, and of any other government or agency whatever, may serve at the request of the authority upon such advisory committees as the authority shall determine to create and such officers and personnel may serve upon such committees without forfeiture of office or employment and with no loss or diminution in the compensation, status, rights and privileges which they otherwise enjoy.
- **2.** Notwithstanding any contrary provision of law, every municipality in this transportation district is authorized and empowered to consent to the use by the authority of any real or personal property owned by any such municipality and necessary, convenient or desirable in the opinion of the authority for any of the facilities or projects authorized under this title, including such real property as has already been devoted to a public use, and as an incident to such consent, to lease or otherwise transfer and convey to the authority any such real or personal property upon such terms as may be determined by the authority and any such municipality. Every such municipality is also authorized and empowered, as an incident to such consent, to vest in the authority the control, possession, operation, maintenance, rents, charges and any and all other revenues of any facilities now owned by any such municipality, the title to such facilities remaining in such municipality.
- **3.** Notwithstanding any contrary provision of law, every municipality in the transportation district may, by ordinance, local law, or resolution of its governing body, make covenants with the authority which shall inure to the benefit of the holders of any bonds or notes issued by the authority under this title and which shall be a part of the contract with the holders of such bonds or notes, as to
 - **(a)** . The authorizing of the construction of any facilities which will be competitive with any facilities owned or operated by the authority or within a reasonable sphere of operation or extension of such facilities by the authority;
 - **(b)** . Discontinuing of any facilities owned or operated by the municipality or any department or agency thereof;

- (c) . Limitations on the licensing of private facilities within the territorial limits of the municipality which may compete with the facilities owned or operated by the authority or within a reasonable sphere of operation or extension by the authority; and
- (d) . Transferring to the authority any powers or functions of the municipality or any department or agency thereof, or the control of any property thereof.
- 4. The commissioner of general services shall have power, in his discretion, from time to time to transfer and convey to the authority, or to a subsidiary corporation of the authority, and for such consideration as may be determined by him to be paid to the state, unappropriated state lands and lands under water which the authority shall certify to be necessary or desirable for the corporate purposes of the authority.

§ 1299-i. Notes and bonds of the authority

- 1.
 - (a) The authority shall have power and is hereby authorized from time to time to issue its negotiable bonds and notes in conformity with applicable provisions of the uniform commercial code in such principal amount as, in the opinion of the authority, shall be necessary to provide sufficient funds for achieving its purposes, including the acquisition, establishment, construction, effectuation, operation, maintenance, renovation, improvement, extension or repair of any transportation facility, the payment of interest on bonds and notes of the authority, establishment of reserves to secure such bonds and notes, the provision of working capital and all other expenditures of the authority and its subsidiary corporations incident to and necessary or convenient to carry out their purposes and powers;
 - (b) The authority shall have power, from time to time, to issue renewal notes, to issue bonds to pay notes and 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 to issue bonds partly to refund bonds then outstanding and partly for any other purpose. The refunding bonds shall be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded;
 - (c) Except as may otherwise be expressly provided by the authority, every issue of its notes or bonds shall be general obligations of the authority payable out of any revenues or moneys of the authority, subject only to any agreements with the holders of particular notes or bonds pledging any particular receipts or revenues;
- 2. The notes and bonds shall be authorized by resolution approved by not less than a majority of the whole number of members of the authority then in office, shall bear such date or dates, and shall mature at such time or times, in the case of any such note or any renewals thereof not exceeding five years from the date of issue of such original note, and in the case of any such bond not exceeding fifty years from the date of issue, as such resolution or resolutions may provide. The notes and bonds shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, 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 of redemption as such resolution or resolutions may provide. The notes and bonds of the authority may be sold by the authority, at public or private sale, at such price or prices as the authority shall determine. No notes or bonds of the authority may be sold by the authority at private sale,

however, unless such sale and the terms thereof have been approved in writing by (a) the comptroller, where such sale is not to the comptroller, or (b) the director of the budget, where such sale is to the comptroller.

- **3.** Any resolution or resolutions authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of the contract with the holders thereof, as to:
 - **(a)** pledging all or any part of the fares, tolls, rentals, rates, charges and other fees made or received by the authority or any of its subsidiary corporations, and other moneys received or to be received, to secure the payment of the notes or bonds or of any issue thereof, subject to such agreements with bondholders or noteholders as may then exist;
 - **(b)** pledging all or any part of the assets of the authority or of any of its subsidiary corporations to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to such agreements with noteholders or bondholders as may then exist;
 - **(c)** the use, and disposition of fares, tolls, rentals, rates, charges and other fees made or received by the authority or any of its subsidiary corporations;
 - **(d)** the setting aside of reserves or sinking funds and the regulation and disposition thereof;
 - **(e)** limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging such proceeds to secure the payment of the notes or bonds or of any issue thereof;
 - **(f)** limitations on the issuance of additional notes or bonds; the terms upon which additional notes or bonds may be issued and secured; the refunding of outstanding or other notes or bonds;
 - **(g)** the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;
 - **(h)** limitations on the amount of moneys to be expended by the authority or any of its subsidiary corporations for operating, administrative or other expenses of the authority or any of its subsidiary corporations;
 - **(i)** vesting in a trustee or trustees such property, 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 this title, and limiting or abrogating the right of the bondholders to appoint a trustee under this article or limiting the rights, powers and duties of such trustee;
 - **(j)** any other matters, of like or different character, which in any way affect the security or protection of the notes or bonds.
- **4.** In addition to the powers herein conferred upon the authority to secure its notes and bonds, the authority shall have power in connection with the issuance of notes and bonds to enter into such agreements as the authority may deem necessary, convenient or desirable concerning the use or disposition of its monies or property or the monies or property of any of its subsidiary corporations, including the mortgaging of any such property and the entrusting, pledging or creation of any other security interest in any such monies or property and the doing of any act (including refraining from doing any act) which the authority would have the right to do in the absence of such agreements. The authority shall have power to enter into amendments of any such agreements within the powers granted to the authority by this title and to perform such agreements. The provisions of any such

agreements may be made a part of the contract with the holders of the notes and bonds of the authority.

- **5.** It is the intention hereof that any pledge, mortgage or security instrument made by the authority shall be valid and binding from the time when the pledge, mortgage or security instrument is made; that the monies or property so pledged, mortgaged and entrusted and thereafter received by the authority shall immediately be subject to the lien of such pledge, mortgage or security instrument without any physical delivery thereof or further act; and that the lien of any such pledge, mortgage or security instrument 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 mortgage, security instrument or other instrument by which a pledge, mortgage lien or other security is created need be recorded or filed and the authority shall not be required to comply with any of the provisions of the uniform commercial code.
- **6.** Neither the members of the authority nor any person executing the notes or bonds shall be liable personally on the notes or bonds or be subject to any personal liability or accountability by reason of the issuance thereof.
- **7.** The authority, subject to such agreements with noteholders or bondholders as may then exist, shall have power out of any funds available therefor to purchase notes or bonds of the authority, which shall thereupon be cancelled, at a price not exceeding (a) if the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date thereon, or (b) if the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date.
- **8.** The state shall not be liable on notes or bonds of the authority and such notes and bonds shall not be a debt of the state, and such notes and bonds shall contain on the face thereof a statement to such effect.

§ 1299-j. Reserve funds and appropriations

- **1.** The authority may create and establish one or more reserve funds to be known as debt service reserve funds and may pay into such debt service reserve funds (a) any monies appropriated and made available by the state for the purposes of such funds, (b) any proceeds of sale of notes or bonds to the extent provided in the resolution of the authority authorizing the issuance thereof, and (c) any other monies which may be made available to the authority for the purpose of such funds from any other source or sources. The monies held in or credited to any debt service reserve fund established under this section, except as hereinafter provided, shall be used solely for the payment of the principal of bonds of the authority secured by such debt service reserve fund as the same mature, the purchase of such bonds of the authority, the payment of interest on such bonds of the authority or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity; provided, however, that the authority shall have power to provide that monies in any such fund shall not be withdrawn therefrom at any time in such amount as would reduce the amount of such fund to less than the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year or years not exceeding two such years on the bonds of the authority then outstanding and secured by such debt service reserve fund, except for the purpose of paying principal of and interest

on such bonds of the authority secured by such debt service reserve fund maturing and becoming due and for the payment of which other monies of the authority are not available. Any income or interest earned by, or increment to, any such debt service reserve fund due to the investment thereof may be transferred by the authority to any other fund or account of the authority and the authority shall have power to provide that any such transfer shall not reduce the amount of such debt service reserve fund below the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year or years not exceeding two such years on all bonds of the authority then outstanding and secured by such debt service reserve fund.

- **2.** The authority shall have power to provide that it shall not issue bonds at any time if the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year or years not exceeding two such years on the bonds outstanding and then to be issued and secured by a debt service reserve fund will exceed the amount of such debt service reserve fund at the time of issuance, unless the authority, at the time of the issuance of such bonds, shall deposit in such debt service reserve fund from the proceeds of the bonds so to be issued, or otherwise, an amount which, together with the amount then in such debt service reserve fund, will be not less than the maximum amount of principal and interest maturing and becoming due in any such succeeding calendar year or years not exceeding two such years on the bonds then to be issued and on all other bonds of the authority then outstanding and secured by such debt service reserve fund.
- **3.** In computing the amount of any debt service reserve fund for the purposes of this section, securities in which all or a portion of such fund shall be invested shall be valued at par, or if purchased at less than par, at their cost to the authority.

§ 1299-k. Agreement of the state—


- The state does hereby pledge to and agree with the holders of any notes or bonds issued under this title, that the state will not limit or alter the rights hereby vested in the authority to acquire, establish, construct, effectuate, operate, maintain, renovate, improve, extend or repair any authority facilities, to establish, levy and collect fares, tolls, rentals, rates, charges and other fees, to receive and use for its corporate purposes, in the same manner as its own funds and revenues, all moneys directed by law to be paid to it by the Buffalo and Fort Erie public bridge authority, and to fulfill the terms of any agreements made with the holders thereof, or in any way impair the rights and remedies of such holders until such notes or bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses for which the authority is liable in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with the holders of such notes or bonds.

§ 1299-l. Right of state to require redemption of bonds

- Notwithstanding and in addition to any provisions for the redemption of bonds which may be contained in any contract with the holders of the bonds, the state may, upon furnishing sufficient funds therefor, require the authority to redeem, prior to maturity, as a whole, any

issue of bonds on any interest payment date not less than twenty years after the date of the bonds of such issue at one hundred five per centum of their face value and accrued interest or at such lower redemption price as may be provided in the bonds in case of the redemption thereof as a whole on the redemption date. Notice of such redemption shall be published in at least two newspapers published and circulating respectively in the cities of Buffalo and Niagara Falls at least twice, the first publication to be at least thirty days before the date of redemption.

§ 1299-m. Remedies of noteholders and bondholders

- **1.** In the event that the authority shall default in the payment of principal of or interest on any issue of notes or 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 notes or bonds, the holders of twenty-five per centum in aggregate principal amount of the notes or bonds of such issue than [then]  outstanding, by instrument or instruments filed in the office of the clerk of any county in which the authority operates and has an office and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such notes or 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 notes or bonds then outstanding shall, in his or its own name:
 - **(a)** by suit, action or proceeding in accordance with the civil practice law and rules, enforce all rights of the noteholders or bondholders, including the right to require the authority to collect fares, tolls, rentals, rates, charges and other fees adequate to carry out any agreement as to, or pledge of, such fares, tolls, rentals, rates, charges and other fees and to require the authority to carry out any other agreements with the holders of such notes or bonds and to perform its duties under this title;
 - **(b)** bring suit upon such notes or bonds;
 - **(c)** by action or suit, require the authority to account as if it were the trustee of an express trust for the holders of such notes or bonds;
 - **(d)** by action or suit, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such notes or bonds;
 - **(e)** declare all such notes or 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 notes or 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 or noteholders in the enforcement and protection of their rights.
- **4.** The supreme court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of such noteholders or bondholders. The venue of any such suit, action or proceeding shall be laid in the county in which the instrument or instruments are filed in accordance with subdivision one of this section.

- 5. Before declaring the principal of notes or bonds due and payable, the trustee shall first give thirty days' notice in writing to the governor, to the authority, to the comptroller and to the attorney general of the state.

§ 1299-n. Notes and bonds as legal investment

- The notes and bonds of the authority are hereby made securities in which all public officers and bodies of the state and all municipalities and political 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, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or who may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. Notwithstanding any other provisions of law, the bonds of the authority are also hereby made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and political subdivisions for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized.

§ 1299-o. Exemption from taxation

- It is hereby found, determined and declared that the creation of the authority and the carrying out of its purposes is in all respects for the benefit of the people of the state of New York and for the improvement of their health, welfare and prosperity and is a public purpose, and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this title. Without limiting the generality of the following provisions of this section, property owned by the authority, property leased by the authority and used for transportation purposes, and property used for transportation purposes by or for the benefit of the authority exclusively pursuant to the provisions of a joint service arrangement or of a joint facilities agreement or trackage rights agreement shall all be exempt from taxation and special ad valorem levies. The authority shall be required to pay no fees, taxes or assessments, whether state or local, except special benefit assessments if said property is located in a special benefit district, including but not limited to fees, taxes or assessments on real estate, franchise taxes, sales taxes or other excise taxes, upon any of its property, or upon the use thereof, or upon its activities in the operation and maintenance of its facilities or on any fares, tolls, rentals, rates, charges or other fees, revenues or other income received by the authority and the bonds of the authority and the income therefrom shall at all times be exempt from taxation, except for gift and estate taxes and taxes on transfers. This section shall constitute a covenant and agreement with the holders of all bonds issued by the authority. The terms "taxation" and "special ad valorem levy" shall have the same meanings as defined in section one hundred two of the real property tax law and the term "transportation purposes" shall have the same meaning as used in titles two-a and two-b of article four of such law.

§ 1299-p. Actions against the authority

- **1.** As a condition to the consent of the state to such suits against the authority, in every action against the authority for damages, for injuries to real or personal property or for the destruction thereof, or for personal injuries or death, the complaint shall contain an allegation that at least thirty days have elapsed since the demand, claim or claims upon which such action is founded were presented to a member of the authority or other officer designated for such purpose and the authority has neglected or refused to make an adjustment or payment thereof.
- **2.** An action against the authority founded on tort, except an action for wrongful death, shall not be commenced more than one year and ninety days after the cause of action therefor shall have accrued, nor unless a notice of claim shall have been served on the authority within the time limited by and in compliance with all the requirements of section fifty-e of the general municipal law. 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.
- **3.** The authority shall be liable, and shall assume the liability to the extent that it shall save harmless any duly appointed officer or employee of the authority, for the negligence of such officer or employee, in the operation of a vehicle or other facility of transportation owned or otherwise under the jurisdiction and control of the authority in the discharge of a duty imposed upon such officer or employee at the time of the accident, injury or damages complained of, while otherwise acting in the performance of his duties and within the scope of his employment.
- **4.** The authority may require any person, presenting for settlement an account or claim for any cause whatever against the authority, to be sworn before a member, counsel or an attorney, officer or employee of the authority designated for such purpose, concerning such account or claim and when so sworn to answer orally as to any facts relative to such account or claim. The authority shall have power to settle or adjust all claims in favor of or against the authority.
- **5.** The rate of interest to be paid by the authority upon any judgment for which it is liable shall not exceed four per centum per annum.
- **6.** The provisions of this section which relate to the requirement for service of a notice of claim shall not apply to a subsidiary corporation of the authority. In all other respects, each subsidiary corporation of the authority shall be subject to the provisions of this section as if such subsidiary corporation were separately named herein, provided, however, that a subsidiary corporation of the authority which is a stock corporation shall not be subject to the provisions of this section except with respect to those causes of action arising on and after the first day of the twelfth calendar month following that calendar month in which such stock corporation becomes a subsidiary corporation of the authority.

§ 1299-q. Station operation and maintenance

- The operation, maintenance and use of passenger stations shall be public purposes of the counties of Erie and Niagara. The total cost to the authority and each of its subsidiary corporations of operation, maintenance and use of each passenger station within the district serviced by one or more railroad facilities of the authority or of such subsidiary corporation,

including the buildings, appurtenances, platforms, lands and approaches incidental or adjacent thereto, shall be borne by the county within the district in which such station is located. On or before June first of each year, the authority shall determine and certify to the counties of Erie and Niagara the total cost to the authority and its subsidiary corporations, for the twelve-month period ending the preceding March thirty-first, of operation, maintenance and use of each such passenger station within each county, respectively. On or before the following September first, of each year, each such county shall pay to the authority such cost so certified to it on or before the preceding June first. If for any such twelve-month period the authority determines that the total revenues of any railroad facility will be such as not to require payment for the full amount of the costs of operation, maintenance and use of the passenger stations served by such facility, the authority in its discretion may reduce by a uniform percentage of established costs the amounts required of each county so served, provided however, that the amount required of any such county shall not be reduced for any such twelve-month period below the total cost to the authority and its subsidiary corporations so certified of maintenance and use of such passenger stations so served in such county. Each county shall have power to finance such costs to it by the issuance of budget notes pursuant to [section 29.00 of the local finance law](#).

§ 1299-r. Agreements relating to payments in lieu of taxes

- To the end that municipal corporations, counties, cities, towns, villages and school districts may not suffer undue loss of taxes or assessments:
- If the authority owns or acquires property and all or any portion of such property is subsequently developed, improved or used for non-transportation purposes, it shall during such period of disuse for transportation purposes be subject to assessment, at the prevailing method of determining assessments based upon the current assessed value of all or the relevant portion of such property by the appropriate assessing unit and the authority shall, based on such assessment, annually, in lieu of taxes, pay such amount to the municipal corporation and/or school district.
- The authority may, in its discretion, enter into agreements to pay annual sums in lieu of taxes in respect of any real property which is owned by the authority and exempt from taxation pursuant to section twelve hundred ninety-nine-o of this article to the participating municipal corporation or school district in which the property is located, provided however, that the amount so paid for any year upon such property shall not exceed the sum last paid as taxes on such property to such municipal corporation or school district prior to the time of its acquisition by the agency.
- Vacant properties, properties acquired by the authority for non-transportation purposes but intended to be used for future transportation purposes and properties acquired by the authority for transportation purposes and used as such, shall not be subject to the payment of any taxes or any payments in lieu thereof except that the authority shall pay such property special benefit assessments on the property if it is located in an existing special benefit district.

§ 1299-s. Five-year capital and operating plans

- 1.
 - (a) On or before October first, nineteen hundred ninety, and annually thereafter on or before April first, the authority shall adopt a capital program plan for the five-year period commencing April first. The plan shall contain the capital program, separately itemized, by the following functions: metro transit operations, airport operations, and port operations.
 - (b) The plan shall set goals and objectives by function for capital spending, establish standards for service and operations, describe each capital project proposed to be initiated in each of the years covered by the plan and explain how each proposed project supports the achievement of the service and operational standards established in the plan. The plan shall list separately by function those projects contributing to the maintenance of the system infrastructure and those intended to enhance the system. The plan shall also include an estimated cost for each project and set forth an estimate of the amount of capital funding required for each year of the plan and the expected sources of such funding. It shall also include a project schedule for the initiation and completion of each project. Each plan subsequent to the first such plan shall describe the current status of each capital project included in the previously adopted plan.
 - (c) In addition to the annual update, a quarterly capital plan status report shall be provided to the committee on capital planning and shall include, but not be limited to, a description of any material change in the scope, cost, funding or time of initiation or completion of a project as adopted in the plan. The first such report shall cover the three month period commencing April first, nineteen hundred ninety-one and shall be submitted no later than thirty days after the end of the quarter. Thereafter, quarterly reports shall be submitted on the last day of October, January, April and July.
- 2.
 - (a) On or before October first, nineteen hundred ninety, and annually thereafter on or before April first, the authority shall adopt an operating plan for the five-year period commencing April first. The plan shall include the annual estimated operating cost for the following authority functions: metro transit operations, airport operations, and port operations. The plans shall also include the proposed method of financing for the level of service defined for each year of the plan and shall fully allocate the general authority costs to the authority's functions. The plan shall provide a narrative describing the overall financial condition of the authority.
 - (b) In addition to the annual update, the authority shall prepare for the committee on finance and audit quarterly reports on the financial condition of each of its functions. The first such report shall cover the three month period commencing April first, nineteen hundred ninety-one and shall be submitted no later than thirty days after the end of the quarter. Thereafter, quarterly reports shall be submitted on the last day of October, January, April and July. The reports shall include a budgetary comparison of the most recent quarter and year-to-date actual revenues and expenditures with the same time period in the previous year and with the projections for that time period based on the board approved budget. The reporting for the metro transit operations shall be separate for the bus and light rail divisions.

- 3.
 - (a) On or before October first, nineteen hundred ninety, and annually thereafter on or before April first, the authority shall set operational performance goals and objectives for the metro transit operations, consistent with paragraph (b) of subdivision one of this section and shall establish performance indicators to measure standards of service and operations. The performance indicators shall include: revenue passengers, total passengers, revenue vehicle miles, revenue vehicle hours, number of employees by department, vehicle mean distance between failure, on-time performance for total service provided, the cost per revenue passenger, the cost per revenue vehicle mile and the revenue-to-cost ratio.
 - (b) The authority shall prepare for the committee on operations and personnel quarterly reports on the operating performance of the metro transit operations. The first such report shall cover the three month period commencing April first, nineteen hundred ninety-one and shall be submitted no later than thirty days after the end of the quarter. Thereafter, quarterly reports shall be submitted on the last day of October, January, April and July. The reporting for the metro transit operations shall be separate for the bus and light rail divisions. The report shall compare the performance indicators of the most recent quarter and the year-to-date performance indicators with the same time period in the previous year and with the annual goals established pursuant to this subdivision.
- 4. Any and all annual reports, including interim reports, shall be submitted to the director of the division of the budget, the commissioner of transportation and the chief executive officer of Erie county and Niagara county, the county legislatures of Erie county and Niagara county, the temporary president of the senate, the speaker of the assembly, the chairpersons of the senate finance committee and the assembly ways and means committee, and the chairpersons of the senate and assembly transportation committees.

§ 1299-t. Contracts

- The authority shall promulgate regulations pursuant to the state administrative procedure act governing the award of all contracts for public work and all purchase contracts, including the procurement of supplies, material and equipment; personal and professional service contracts; emergency purchases; and advertising. Prior to promulgating such regulations, the authority shall submit the proposed regulations for comment to the chief executive officers and county legislatures of Erie county and Niagara county. The authority shall also establish internal controls necessary to insure compliance with these regulations. The authority shall retain independent auditors to analyze and evaluate the effectiveness of such internal controls.

§ 1299-u. Title not affected if in part unconstitutional or ineffective

- If any provision of any section of this title or the application thereof to any person or circumstance shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered,

and shall not affect or invalidate the remainder of any provision of any section of this title or the application of any part thereof to any other person or circumstance and to this end the provisions of each section of this title are hereby declared to be severable.