

NOTES:

See 1987 note under § 2041-b.

§ 2041-x. Effect of inconsistent provisions

Insofar as the provisions of this title are inconsistent with the provisions of any other act, general or special, or of the county charter, any local law, ordinance or resolution of a participating county or any other municipality within the area of operation, the provisions of this title shall be controlling. Nothing contained in this section shall be held to supplement or otherwise expand the powers or duties of the authority otherwise set forth in this title. Nothing contained in this title shall be held to alter or abridge the powers and duties of the department of environmental conservation or the department of health.

HISTORY:

Add, L 1987, ch 747, § 1, eff Aug 5, 1987.

NOTES:

See 1987 note under § 2041-b.

**[§§ 2042-2045 have been reserved for future use.
Please check your supplement.]**

TITLE 13-B**Onondaga County Resource Recovery Agency**

- § 2045-a. Short title
- § 2045-b. Definitions
- § 2045-c. Onondaga county resource recovery agency
- § 2045-d. Transfer of property to agency; acquisition of property by county for agency
- § 2045-e. Powers of the agency
- § 2045-f. Governmental capacity of the agency and municipalities
- § 2045-g. Transfer of officers and employees
- § 2045-h. Bonds of the agency
- § 2045-i. Remedies of bondholders
- § 2045-j. State, county and municipalities not liable on agency bonds
- § 2045-k. Moneys of the agency
- § 2045-l. Bonds legal investment for fiduciaries
- § 2045-m. Agreement with the state
- § 2045-n. Exemption from taxes, assessments and certain fees
- § 2045-o. Actions against agency
- § 2045-p. Contracts
- § 2045-q. Interest in contracts prohibited
- § 2045-r. Audit and annual report
- § 2045-s. Limited liability
- § 2045-t. Pledge by county; contracts with municipalities; powers of municipalities
- § 2045-u. Solid waste facility reserve fund
- § 2045-v. Transfer of environmental applications, proceedings, approvals and permits
- § 2045-w. Separability clause
- § 2045-x. Effect of inconsistent provisions

HISTORY:

Add, L 1981, ch 932, § 1, eff July 31, 1981.

VERALEX®: Cases and annotations referred to herein can be further researched through the VERALEX electronic retrieval system's two services, **Auto-Cite®** and **SHOWME®**. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references. Use SHOWME to display the full text of cases and annotations.

CROSS REFERENCES:

This title referred to in §§ 2045-b, 2045-c, 2045-d, 2045-e, 2045-f, 2045-h, 2045-i, 2045-m, 2045-n, 2045-q, 2045-s, 2045-t, 2045-u, 2045-v, 2045-w, 2045-x.

§ 2045-a. Short title

This title shall be known and may be cited as the "Onondaga county resource recovery agency act".

HISTORY:

Add, L 1981, ch 932, § 1, eff July 31, 1981.

§ 2045-b. Definitions

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

1. "Agency" shall mean the public benefit corporation created by section two thousand forty-five-c of this title, known as the Onondaga county resource recovery agency.
2. "Bonds" shall mean the bonds, notes or other evidences of indebtedness issued by the agency pursuant to this title and the provisions of this title relating to bonds and bondholders shall apply with equal force and effect to notes and noteholders, respectively, unless the context otherwise clearly requires.
3. "Cost", as applied to any project, shall include the cost of construction, the cost of the acquisition of all property, including real property and other property, both real and personal and improved and unimproved, the cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of all systems, facilities, machinery, apparatus and equipment, financing charges, interest prior to, during and after construction to the extent not paid or provided for from revenues or other sources, the cost of engineering and architectural surveys, plans and specifications, the cost of consultants' and legal services, the cost of lease guarantee or bond insurance, other expenses necessary or incidental to the construction of such project and the financing of the construction thereof, including the amount authorized in the resolution of the agency providing for the issuance of bonds to be paid into any reserve or other special fund from the proceeds of such bonds and the financing of the placing of any project in operation, including reimbursement to the county, or any municipality, state agency, the state, the United States government, or any other person for

- expenditures that would be costs of the project hereunder had they been made directly by the agency.
4. "County" shall mean the county of Onondaga.
 5. "Construction" shall mean the acquisition, erection, building, alteration, improvement, increase, enlargement, extension, reconstruction, renovation or rehabilitation of a solid waste management-resource recovery facility; the inspection and supervision thereof; and the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures and other actions incidental thereto.
 6. "Governing body" shall mean the members of the agency constituting and acting as the governing body of the agency.
 7. "Municipality" shall mean any county, city, town or village or any combination thereof.
 8. "Person" shall mean any natural person, partnership, association, joint venture or corporation, exclusive of a public corporation.
 9. "Project" shall mean any solid waste management-resource recovery facility, the planning, development, financing, construction, operation, or maintenance of which is authorized to be undertaken in whole or in part by the agency pursuant to this title.
 10. "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.
 11. "Resource recovery" shall mean the separation, extraction and recovery of usable materials, energy or heat from solid waste through source separation, recycling centers or other programs, projects or facilities.
 12. "Revenues" shall mean all rates, fees, rents, charges and other income derived by the agency from its operations.
 13. "Solid waste" shall mean all materials or substances discarded or rejected as being spent, useless, worthless, or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water pollution control facilities or water supply treatment facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition and construction debris and offal, but not including sewage and other highly diluted water-carried materials or substances and those in gaseous form, source, special nuclear or by-product material within the meaning of the Atomic Energy Act of 1954, as amended, and waste which appears on the list of hazardous waste promulgated by the

commissioner of environmental conservation pursuant to section 27-0903 of the environmental conservation law.

14. "Solid waste management-resource recovery facility" or "facility" shall mean any facility, plant, works, system, building, structure, improvement, machinery, equipment, fixture or other real or personal property which is to be used, occupied or employed beyond the initial solid waste collection process for the receiving, transporting, storage, processing, or disposal of solid waste or the recovery by any means of any material or energy product or resource therefrom including but not limited to recycling centers, transfer stations, baling facilities, rail haul or maritime facilities, processing systems, resource recovery facilities, steam and electric generating and transmission facilities, including auxiliary facilities to supplement or temporarily replace such generating facilities, steam distribution facilities, sanitary landfills, plants and facilities for compacting, composting or pyrolyzation [pyrolyzation]* of solid wastes, incinerators, and other solid waste disposal, reduction or conversion facilities and resource recovery equipment and disposal equipment as defined in subdivisions four and five of section 51-0903 of the environmental conservation law.
15. "State" shall mean the state of New York.
16. "Source separation" shall mean the segregation of recyclable materials from the solid waste stream at the point of generation for separate collection, sale or other disposition.

HISTORY:

Add, L 1981, ch 932, § 1, eff July 31, 1981.

Sub 2, amd, L 1981, ch 933, § 1, eff July 31, 1981.

CROSS REFERENCES:

Identification and listing of hazardous waste, CLS ECL § 27-0903.

Waste, definition of, CLS ECL § 51-0903.

§ 2045-c. Onondaga county resource recovery agency

1. A corporation known as the Onondaga county resource recovery agency is hereby created for the public purposes and charged with the duties and having the powers provided in this title. The agency shall be a body corporate and politic constituting a public benefit corporation. It shall consist of eleven members, who shall be appointed as follows: (i) four by the county executive; (ii) three by the chairman of the county legislature; (iii) two by the mayor of the city of Syracuse, subject to confirmation by the common council of such city; (iv) one by the town board of the town of Camillus; and (v) one by the town board of the town of Onondaga. The appointments by the county executive and the chairman of the county legislature each shall be subject to confirmation by the county legislature. In making appointments of members, the county executive and the chairman of the county legislature shall give due consideration to the representation of diverse geographical areas. The first members appointed by the county

* Bracketed language inserted by the Publisher.

executive shall be appointed for the following terms of office: one for a term ending on December thirty-first, nineteen hundred eighty-two; one for a term ending on December thirty-first, nineteen hundred eighty-three; and two for a term ending on December thirty-first, nineteen eighty-four. The first members appointed by the chairman of the county legislature shall be appointed for staggered terms of office ending on December thirty-first in each of the years nineteen hundred eighty-two to nineteen hundred eighty-four, inclusive. The first members appointed by the mayor of the city of Syracuse shall be appointed for staggered terms of office ending, respectively, on December thirty-first in each of the years nineteen hundred eighty-two and nineteen hundred eighty-three. The first member appointed by the town board of the town of Camillus shall be appointed for a term of office ending on December thirty-first, nineteen hundred eighty-two. The first member appointed by the town board of the town of Onondaga shall be appointed for a term of office ending on December thirty-first, nineteen hundred eighty-three. Subsequent appointments of members shall be made by the same appointing authorities for a term of three years ending in each case on December thirty-first of the last year of such term. No person who has served as a member for two consecutive terms shall be eligible for reappointment as a member for a third term, except after an interval of at least three years. All members shall continue to hold office until their successors are appointed and qualify. Vacancies shall be filled in the manner provided for original appointments. Vacancies, occurring otherwise than by expiration of term of office, shall be filled for the unexpired terms. Members may be removed from office for the same reasons and in the same manner as may be provided by law for the removal of officers of the county. The members of the agency shall receive no compensation for their services but shall be reimbursed for all their actual and necessary expenses incurred in connection with the carrying out of the purposes of this title. The powers of the agency shall be vested in and be exercised by the governing body at a meeting duly called and held and six members shall constitute a quorum. No action shall be taken except pursuant to the favorable vote of at least six members. The governing body may delegate to one or more of its members, officers, agents or employees such powers and duties as it may deem proper.

2. The officers of the agency shall consist of a chairman, a vice-chairman and a treasurer, who shall be members of the agency, and a secretary, who need not be a member of the agency. Such officers shall be appointed by the governing body and shall serve at the pleasure of the governing body. The governing body may appoint and at pleasure remove an attorney and an engineer, which positions, in addition to the position of secretary, shall be in the exempt class of the civil service, and such additional officers and employees as it may determine necessary for the performance of the powers and duties of the agency, and fix and determine their qualifications, duties and compensation, subject to the provisions of the civil service law. The governing body may also from time to time contract for expert professional services. The treasurer shall execute a bond, conditioned upon the faithful performance of the duties of his office, the amount and sufficiency of which shall be approved by the governing body and the premium therefor shall be paid by the agency.

3. Notwithstanding any inconsistent provision of any general, special or local law, ordinance, resolution or charter, no officer, member or employee of the state, any municipality, or any public benefit corporation, shall forfeit his or her office or employment by reason of his or her acceptance of appointment as a member, officer, agent or employee of the agency, nor shall service as such member, officer, agent or employee be deemed incompatible or in conflict with such office, membership or employment; provided, however, that no public official elected to his or her office pursuant to the laws of the state or any municipality thereof may serve as a member of the governing body of the agency during his or her term of office.

4. (a) The county executive shall file on or before March thirty-first, nineteen hundred eighty-two, in the office of the secretary of state, a certificate signed by the county executive setting forth: (1) the name of the agency; (2) the names of the members appointed by the county executive and at least three other members of the agency and their terms of office; and (3) the effective date of this title. The agency shall be perpetual in duration, except that if such certificate is not filed with the secretary of state on or before such date, then the corporate existence of the agency shall thereupon terminate and it shall thereupon be deemed to be and shall be dissolved.

(b) Except as provided in paragraph (a) of this subdivision, the agency and its corporate existence shall continue until terminated by law, provided, however, that no such law shall take effect so long as the agency shall have bonds or other obligations outstanding unless adequate provision has been made for the payment or satisfaction thereof. Upon termination of the existence of the agency, all of the rights and properties of the agency then remaining shall pass to and vest in the county.

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

6. The agency shall not be deemed a successor in interest to the Onondaga county solid waste disposal authority for any purpose whatsoever. In the event that the county acquires any property from such authority and thereafter transfers such property to the agency, the agency shall not by reason of receiving such property become obligated for any indebtedness or liability of such authority. The agency, upon a determination that it is in the public interest, may assume and pay any compromised or settled claim against such authority which shall be outstanding as of the date of the first issuance of bonds. Nothing in this title shall be construed to require the agency to assume any liability of such authority.

7. It is hereby determined and declared, that the agency and the carrying out of its powers and duties are in all respects for the benefit of the people

of the county and the state of New York for the improvement of their health, welfare and prosperity and that such purposes are public purposes and that the agency is and will be performing an essential governmental function in the exercise of the powers conferred upon it by this title.

HISTORY:

Add, L 1981, ch 932, § 1, eff July 31, 1981.

CROSS REFERENCES:

This section referred to in § 2045-b.

§ 2045-d. Transfer of property to agency; acquisition of property by county for agency

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

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

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

HISTORY:

Add, L 1981, ch 932, § 1, eff July 31, 1981.

§ 2045-e. Powers of the agency

The agency shall have the power:

1. To sue and be sued;
2. To have a seal and alter the same;
3. To acquire in the name of the agency, hold, sell, lease, mortgage or otherwise dispose of property, real, personal or mixed, or any interest therein, without limitation, for its corporate purposes; provided, however, that
 - (i) the agency shall not have the power of eminent domain,
 - (ii) the acquisition by the agency of any real property designated as the site for any facility shall be subject to prior approval by the county legislature, and
 - (iii) in selecting the location for any such site the agency shall give consideration to the present and any proposed land use character of the area in which such site is to be located and the zoning laws or regulations, if any, otherwise generally applicable to such area;
4. To receive, transport, process, dispose of, sell, store, convey, recycle, and deal with, in any lawful manner and way, solid waste and any products or by-products thereof now or hereafter developed or discovered, including any energy generated by the opera-

tion of any solid waste management-resource recovery facility. Any such disposal or sale may be effected on such terms and in such manner as the agency may deem proper;

5. To plan, develop and construct projects and to pay the cost thereof and to have the right to contract in relation thereto with municipalities or persons within or without the county and to own and operate, maintain, repair, improve, reconstruct, enlarge, and extend, subject to the provisions of this title, any of its projects acquired or constructed under this title, and to sell, lease, mortgage or otherwise dispose of any project or part thereof to any person or public corporation, subject to such conditions and limitations as the agency may determine to be in the public interest;
6. To assist in the planning, development and construction of and the financing of the cost of any solid waste management-resource recovery facility to be located in the county whether or not such solid waste management-resource recovery facility is to be owned or operated by the agency, which assistance may include loans to any person or public corporation. Any such solid waste management-resource recovery facility producing either electricity or shaft horsepower and useful thermal energy shall constitute a co-generation facility as defined in subdivision two-a of section two of the public service law;
7. To receive from the United States, the state, the county, any other municipality or public corporation or person, solid waste for the purpose of treatment or disposal thereof, with the right of the agency to sell and dispose of any products or by-products (including energy) of such process of treatment or disposal, as the agency may deem proper;
8. To contract with the county, other municipalities, state agencies, public corporations or persons within or without the county, for the purpose of receiving, treating and disposing of solid waste including without limitation to contract with persons for the delivery of all solid waste generated within a stated area to a specific solid waste management-resource recovery facility;
9. To make by-laws for the management and regulation of its affairs and, subject to agreements with bondholders, for the regulation of the use of any project or other property of the agency, which by-laws and all amendments thereto, duly certified by the secretary of the agency, shall be filed in the office of the agency and in the office of the clerk of the county, and to provide for the enforcement of such by-laws by legal or equitable proceedings which are or may be provided or authorized by law. In addition, the county legislature shall have power to prescribe that violations of specific by-laws of the agency shall constitute offenses or infractions and provide for the punishment of violations thereof by civil penalty;
10. With the consent of the county executive, to use officers or employees of the county and to pay a proper portion of the

compensation or costs for the services for such officers or employees;

11. To make contracts and to execute all necessary or convenient instruments, including evidences of indebtedness, negotiable or nonnegotiable;
12. To enter, with the consent of the county executive, any lands, waterways and premises for the purpose of making surveys, soundings, and examinations, and liability therefor shall not exceed actual damages;
13. To borrow money and to issue bonds and to fund or refund the same, and to provide for the rights of the holders thereof;
14. Subject to any limitations imposed by any contract pursuant to subdivision two of section two thousand forty-five-t of this title, to fix and collect rates, rentals, fees and other charges for the use of the facilities of, or services rendered by, or any commodities furnished by, the agency so as to provide revenues sufficient at all times to pay, as the same shall become due, the principal and interest on the bonds of the agency, together with the maintenance of proper reserves therefor, in addition to paying, as the same shall become due, the expenses of operating and maintaining the properties of the agency, together with proper reserves for debt service, depreciation, maintenance and contingencies and all other obligations and indebtedness of the agency. Except as may be otherwise expressly permitted under this title, any such rates, rentals, fees and other charges shall be fixed without discrimination among the municipalities within the county entering into contracts with the county pursuant to section two thousand forty-five-t of this title on or before the first date on which the county enters into a contract with the agency pursuant to paragraph (i) of subdivision two of such section two thousand forty-five-t of this title. The agency shall in no event fix any such rates, rentals, fees or other charges with respect to municipalities entering into such contracts with the county subsequent to such date in amounts less than those fixed with respect to municipalities entering into such contracts with the county on or before such date;
15. To accept gifts, grants, loans or contributions from the United States, the state or any agency or instrumentality of either of them, or any municipality or from any person, by bequest or otherwise, and to expend the proceeds for any corporate purposes of the agency; and
16. To do all things necessary or convenient to carry out the powers expressly given in this title.

HISTORY:

Add, L 1981, ch 932, § 1, eff July 31, 1981.

Sub 6, amd, L 1981, ch 933, § 2, eff July 31, 1981.

CROSS REFERENCES:

Co-generation facility, definition of, CLS Pub Serv § 2.

§ 2045-f. Governmental capacity of the agency and municipalities

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

HISTORY:

Add, L 1981, ch 932, § 1, eff July 31, 1981.

§ 2045-g. Transfer of officers and employees

Any officer or employee of the county or of the Onondaga county solid waste disposal authority, under civil service, selected by the agency may, with the consent of the county or such authority, be transferred to the agency and shall be eligible for such transfer and appointment, without examination, to applicable offices, positions and employment under the agency. The salary or compensation of any such officer or employee, after such transfer, shall be paid by the agency. Any such officers or employees so transferred to the agency pursuant to this subdivision, who are members of or benefit under any existing pension or retirement fund or system, shall continue to have all rights, privileges, obligations and status with respect to such fund or system as are now prescribed by law, but during the period of their employment by the agency, all contributions to such fund or system to be paid by the employer on account of such officers or employees shall be paid by the agency. All such officers or employees so transferred to the agency who have been appointed to positions under the rules and classifications of the personnel officer of the county shall have the same status with respect thereto after transfer to the agency as they had under their original appointment.

HISTORY:

Add, L 1981, ch 932, § 1, eff July 31, 1981.

§ 2045-h. Bonds of the agency

1. The agency shall have the power and is hereby authorized from time to time to issue bonds, in conformity with applicable provisions of the uniform commercial code, in such principal amounts as it may determine to be necessary to pay the cost of any project or for any other corporate purpose, including incidental expenses in connection therewith. The agency shall have power and is hereby authorized to enter into such agreements and perform such acts as may be required under any applicable federal legislation to secure a federal guarantee of any bonds. The agency shall have power from time to time to refund any bonds by the issuance of new bonds whether the bonds to be refunded have or have not matured, and may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose. Bonds issued by the agency may be general obligations secured by the faith and credit of the agency or may be special obligations payable

solely out of particular revenues or other moneys as may be designated in the proceedings of the agency under which the bonds shall be authorized to be issued and subject to any agreements with the holders of outstanding bonds pledging any particular revenues or moneys.

2. Bonds shall be authorized by resolution of the agency, be in such denominations and bear such date or dates, mature at such time or times, except that notes and any renewals thereof shall mature within five years from the date of the original issuance and bonds and any renewals thereof shall mature within thirty years from the date of the original issuance. The bonds and notes shall be subject to such terms of redemption, bear interest at such rate or rates payable at such times, be in such form, 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 and conditions as such resolution may provide. Bonds may be sold at public or private sale for such price or prices as the agency shall determine. Bonds of the agency shall not be sold by the agency at private sale unless such sale and the terms thereof have been approved in writing by the comptroller, where such sale is not to the comptroller, or by the director of the budget, where such sale is to the comptroller.

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

- (a) pledging all or any part of the revenues, other moneys or property of the agency to secure the payment of the bonds, including but not limited to any contracts, earnings or proceeds of any grant to the agency received from any private or public source;
- (b) the setting aside of reserves and the creation of sinking funds and the regulation and disposition thereof;
- (c) limitations on the purpose to which the proceeds from the sale of bonds may be applied;
- (d) the rates, rents, fees and other charges to be fixed and collected by the agency and the amount to be raised in each year thereby and the use and disposition of revenues;
- (e) limitations on the right of the agency to restrict and regulate the use of the project or part thereof in connection with which bonds are issued;
- (f) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured and the refunding of outstanding or other bonds;
- (g) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds, the holders of which must consent thereto and the manner in which such consent may be given;
- (h) the creation of special funds into which any revenues or moneys may be deposited;
- (i) the terms and provisions of any trust deed or indenture securing the bonds under which the bonds may be issued;
- (j) vesting in a trustee or trustees such properties, rights, powers and duties in trust as the agency may determine which may include

any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to section two thousand forty-five-i of this title and limiting or abrogating the rights of the bondholders to appoint a trustee under such section or limiting the rights, duties and powers of such trustee;

- (k) defining the acts or omissions to act which may constitute a default in the obligations and duties of the agency to the bondholders and providing for the rights and remedies of the bondholders in the event of such default, including as a matter of right the appointment of a receiver, provided, however, that such rights and remedies shall not be inconsistent with the general laws of the state and other provisions of this title;
- (l) limitations on the power of the agency to sell or otherwise dispose of any project or any part thereof;
- (m) limitations on the amount of revenues and other moneys to be expended for operating, administrative or other expenses of the agency;
- (n) the payment of the proceeds of bonds, revenues and other moneys to a trustee or other depository, and for the method of disbursement thereof with such safeguards and restrictions as the agency may determine; and
- (o) any other matters of like or different character which in any way affect the security or protection of the bonds or the rights and remedies of bondholders.

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

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

6. Whether or not the bonds are of such form and character as to be

negotiable instruments under the terms of the uniform commercial code, the bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the bonds for registration.

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

8. The agency, subject to such agreements with bondholders as then may exist, shall have power out of any moneys available therefor to purchase bonds of the agency, which shall thereupon be cancelled, at a price not exceeding

- (i) if the bonds are then redeemable, the redemption price then applicable, plus accrued interest to the next interest payment date,
- (ii) if the bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the bonds become subject to redemption plus accrued interest to the next interest payment date.

HISTORY:

Add, L 1981, ch 932, § 1, eff July 31, 1981.
Sub 2, amd, L 1981, ch 933, § 3, eff July 31, 1981.

CROSS REFERENCES:

This section referred to in § 2045-i.

§ 2045-i. Remedies of bondholders

Subject to any resolution or resolutions adopted pursuant to paragraph (j) of subdivision three of section two thousand forty-five-h of this title:

1. In the event that the agency shall default in the payment of principal of or interest on any issue of bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the agency shall fail or refuse to comply with the provisions of this title or shall default in any agreement made with the holders of any issue of bonds, the holders of twenty-five percent in aggregate principal amount of the bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds for the purpose herein provided.
2. Such trustee may, and upon written request of the holders of twenty-five per centum in principal amount of such bonds outstanding, shall in his or its own name:
 - (a) by action or proceeding in accordance with the civil practice law and rules, enforce all rights of the bondholders, including the right to require the agency to collect rents, rates and charges adequate to carry out any agreement as to, or pledge of such rents, rates and charges and to require the agency to

- carry out any other agreements with the holders of such bonds to perform its duties under this title;
- (b) bring an action or proceeding upon such bonds;
 - (c) by action or proceeding, require the agency to account as if it were the trustee of an express trust for the holders of such bonds;
 - (d) by action or proceeding, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds; and
 - (e) declare all such bonds due and payable, and if all defaults shall be made good, then with the consent of the holders of twenty-five per centum of the principal amount of such bonds then outstanding, to annul such declaration and its consequences.
3. Such trustee shall in addition to the foregoing have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of bondholders in the enforcement and protection of their rights.
 4. The supreme court shall have jurisdiction of any action or proceeding by the trustee on behalf of such bondholders. The venue of any such action or proceeding shall be laid in the county.
 5. Before declaring the principal of bonds due and payable, the trustee shall first give thirty days notice in writing to the agency.
 6. Any such trustee whether or not the issue of bonds represented by such trustee has been declared due and payable, shall be entitled as of right to the appointment of a receiver of any part or parts of the project the revenues of which are pledged for the security of the bonds of such issue and such receiver may enter and take possession of such part or parts of the project and subject to any pledge or agreement with holders of such bonds shall take possession of all moneys and other property derived from such part or parts of the project and proceed with any construction thereon or the acquisition of any property, real or personal, in connection therewith which the agency is under obligation to do, and to operate, maintain and reconstruct such part or parts of the project and collect and receive all revenues thereafter arising therefrom subject to any pledge thereof or agreement with bondholders relating thereto and perform the public duties and carry out the agreements and obligations of the agency under the direction of the court. In any suit, action or proceeding by the trustee the fees, counsel fees and expenses of the trustee and of the receiver, if any, shall constitute taxable disbursements and all costs and disbursements allowed by the court shall be a first charge on any revenues derived from the project.

HISTORY:

Add. L 1981, ch 932, § 1, eff July 31, 1981.

CROSS REFERENCES:

This section referred to in § 2045-h.

§ 2045-j. State, county and municipalities not liable on agency bonds

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

HISTORY:

Add, L 1981, ch 932, § 1, eff July 31, 1981.

§ 2045-k. Moneys of the agency

All moneys of the agency from whatever source derived shall be paid to the treasurer of the agency and shall be deposited forthwith in a bank or banks in the state designated by the governing body. The moneys in such accounts shall be paid out on check of the treasurer upon requisition by the governing body or of such other person or persons as the governing body may authorize to make such requisitions. All deposits of such moneys shall be secured by obligations of the United States or of the state or of the county of a market value equal at all times to the amount on deposit and all banks and trust companies are authorized to give such security for such deposits. The agency shall have power, notwithstanding the provisions of this section, to contract with the holders of any bonds as to the custody, collection, security, investment and payment of any moneys of the agency or any moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds, and carry out any such contract notwithstanding that such contract may be inconsistent with the provisions of this section. Moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of such moneys may be secured in the same manner as moneys of the agency and all banks and trust companies are authorized to give such security for such deposits. Any moneys of the agency not required for immediate use or disbursement may, at the discretion of the agency, be invested in those obligations specified pursuant to the provisions of section ninety-eight-a of the state finance law. Subject to the provisions of any contract with bondholders and with the approval of the comptroller, the agency shall prescribe a system of accounts.

HISTORY:

Add, L 1981, ch 932, § 1; amd, L 1981, ch 933, § 4, eff July 31, 1981.

CROSS REFERENCES:

Investment of general funds, bond proceeds, and other funds not immediately required, CLS St Fin § 98-a.

§ 2045-l. Bonds legal investment for fiduciaries

The bonds of the agency are hereby made securities in which all public officials and bodies of the state and all municipalities, all insurance companies and associations and other persons carrying on an insurance business,

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

HISTORY:

Add, L 1981, ch 932, § 1, eff July 31, 1981.

§ 2045-m. Agreement with the state

The state does hereby pledge to and agree with the holders of any bonds issued by the agency pursuant to this title that the state will not alter or limit the rights hereby vested in the agency to purchase, construct, maintain, operate, repair, improve, increase, enlarge, extend, reconstruct, renovate, rehabilitate or dispose of any project, or any part or parts thereof, for which bonds of the agency shall have been issued, to establish and collect rates, rents, fees and other charges referred to in this title, to fulfill the terms of any agreement made with or for the benefit of the holders of bonds or with any public corporation or person with reference to such project or part thereof, or in any way impair the rights and remedies of bondholders, until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The agency is authorized to include this pledge and agreement of the state in any agreement with bondholders.

HISTORY:

Add, L 1981, ch 932, § 1, eff July 31, 1981.

§ 2045-n. Exemption from taxes, assessments and certain fees

1. It is hereby determined that the creation of the agency and the carrying out of its corporate purposes is in all respects for the benefit of the people of the county and the state and is a public purpose and the agency shall be regarded as performing a governmental function in the exercise of the powers conferred upon it by this title and shall not be required to pay any taxes or assessments upon any property owned by it or under its jurisdiction, control or supervision or upon its activities, or any filing, recording or transfer fees or taxes in relation to instruments filed, recorded or transferred by it or on its behalf. The construction, use, occupation or possession of any property owned by the agency or the county, including improvements thereon, by any person or public corporation under a lease, lease and sublease or any other agreement shall not operate to abrogate or limit the foregoing exemption, notwithstanding that the lessee, user, occupant or

person in possession shall claim ownership for federal income tax purposes. The agency shall be deemed a public authority for the purposes of section four hundred twelve of the real property tax law.

2. Except in the case of a municipality in which there shall be located a solid waste management-resource recovery facility, the agency shall not be authorized to make any payments in lieu of real property taxes or assessments. The provisions of this subdivision shall not be deemed to prohibit the agency from paying for specific governmental services provided to it by any municipality, fire district or fire protection district, and any fire district or fire protection district providing such services is hereby authorized to charge for such services and to receive such payments.

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

HISTORY:

Add, L 1981, ch 932, § 1, eff July 31, 1981.

CROSS REFERENCES:

Transfers, CLS Civ S § 70.

Public authorities, CLS Real P Tax § 412.

§ 2045-o. Actions against agency

1. No action or special proceeding shall be prosecuted or maintained against the agency for personal injury or damage to real or personal property alleged to have been sustained by reason of the negligence or wrongful act of the agency or of any member, officer, agent or employee thereof, unless

- (a) a notice of claim shall have been made and served upon the agency within the time limit by and in compliance with section fifty-e of the general municipal law,
- (b) it shall appear by and as an allegation in the complaint or moving papers that at least thirty days have elapsed since the service of such notice and that adjustment or payment thereof has been neglected or refused, and
- (c) the action or special proceeding shall be commenced within one year and ninety days after the happening of the event upon which the claim is based.

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

3. The agency may require any person, presenting for settlement an

account or claim for any cause whatever against the agency to be sworn before a member, counsel or an attorney, officer or employee of the agency designated for such purpose, concerning such account or claim and when so sworn, to answer orally as to any facts relative to such account or claim. The agency shall have power to settle or adjust all claims in favor of or against the agency.

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

HISTORY:

Add, L 1981, ch 932, § 1, eff July 31, 1981.

CROSS REFERENCES:

Rate of interest, CLS CPLR § 5004.

Notice of claim, CLS Gen Mun § 50-e.

Examination of claims, CLS Gen Mun § 50-h.

§ 2045-p. Contracts

All contracts or orders, for work, material or supplies performed or furnished in connection with construction, shall be awarded by the agency pursuant to resolution of the governing body except as hereinafter provided. Such awards, when applicable, shall be made in compliance with paragraph (e) of subdivision four and subdivision seven of section one hundred twenty-w of the general municipal law. In any construction contract, the agency may provide a program for the payment of damages for delays and incentive awards in order to encourage timely project completion. An action, suit or proceeding contesting the validity of a contract awarded pursuant to this section, or the validity of the procedures relating to such award, shall be governed by the provisions of subdivision six of section one hundred twenty-w of the general municipal law and the term "municipality" as used in such subdivision six shall mean the agency.

The bidder whose bid is accepted shall give security for the faithful performance of the contract, and such other security as the agency may require, and may be required to maintain any construction done under the contract for such period as shall be stipulated, all in the manner prescribed and required by the agency and the sufficiency of such security shall, in addition to the justification and acknowledgment, be approved by the agency. All bids or proposals shall be publicly opened by the governing body or its duly authorized agent. If the bidder whose bid or proposal has been accepted after advertising shall neglect or refuse to accept the contract within five days after written notice that the contract has been awarded to him on his bid or proposal, or, if he accepts but does not execute the contract and give proper security, the agency shall have the right to declare his deposit forfeited. In case any work shall be abandoned by any contractor, the agency may, if it determines that the public interest is thereby

served, adopt on behalf of the agency any or all subcontracts made by such contractor for such work and all such subcontractors shall be bound by such adoption if made. No bid or proposal shall be accepted from or any contract awarded to, any person or corporation who is in arrears to the agency or the county upon any obligation of the agency or of the county. Every contract involving an expenditure of more than five thousand dollars when made and entered into as herein provided for shall be executed in duplicate, one copy of which shall be held by the agency and one copy of which shall be delivered to the contractor. The agency may adopt, utilize, ratify and confirm any request for proposals, invitation for sealed bids, plans, specifications and notices heretofore or hereafter published by the county with respect to any proposed project, and the agency may adopt, utilize, accept and confirm any bids or proposals submitted to the county and heretofore or hereafter received and publicly opened by the county. The provisions of this section shall supersede any inconsistent provisions of the general municipal law, any other general, special or local law, or the charter of the county. The agency shall be deemed an authority for the purpose of section twenty-eight hundred seventy-eight of this chapter.

HISTORY:

Add, L 1981, ch 932, § 1, eff July 31, 1981.
Opening par, amd, L 1981, ch 933, § 5, eff July 31, 1981.
Last undesignated par, amd, L 1983, ch 838, § 15, eff Aug 3, 1983.

CROSS REFERENCES:

Contracts and agreements for solid waste management, collection and disposal, CLS
Gen Mun § 120-w.

§ 2045-q. Interest in contracts prohibited

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

HISTORY:

Add, L 1981, ch 932, § 1, eff July 31, 1981.

§ 2045-r. Audit and annual report

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

HISTORY:

Add, L 1981, ch 932, § 1, eff July 31, 1981.

CROSS REFERENCES:

Public corporations; restrictions on creation and powers; accounts; obligations of,
CLS NYS Const Art X § 5.

§ 2045-s. Limited liability

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

HISTORY:

Add, L 1981, ch 932, § 1, eff July 31, 1981.

§ 2045-t. Pledge by county; contracts with municipalities; powers of municipalities

1. The county is hereby authorized to pledge to and agree with the holders of the bonds that the county will not limit or impair the rights hereby vested in the agency to purchase, construct, maintain, operate, repair, improve, increase, enlarge, extend, reconstruct, renovate, rehabilitate or dispose of any project, or any part or parts thereof, for which bonds of the agency shall have been issued, to establish and collect rates, rents, fees and other charges referred to in this title and to fulfill the terms of any agreements made with the holders of the bonds or with any public corporation or person with reference to such project or part thereof, or in any way impair the rights and remedies of the bondholders, until the bonds, together with interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the bondholders are fully met and discharged.

2. The county and one or more municipalities within the county, or the agency and the county, shall have power to contract from time to time between or among themselves; or among themselves and with the agency, in relation to the receiving, transporting, storage, processing or disposal of solid waste or for the purchase or use of any materials, energy, by-products or residue generated by or resulting from the operation of any solid waste management-resource recovery facility. Any such contract to which the county and any municipality within the county are parties may include provisions stipulating the maximum rates, rentals, fees and other charges to be collected for the use of facilities. Any contract to which the agency and the county are parties may include provisions (i) requiring the periodic delivery to the facilities of the agency of minimum amounts of solid waste and providing for specified minimum periodic payments whether or not such delivery is made, (ii) limiting the right of the agency to receive or to contract to receive, treat and dispose of solid waste originating outside the county, or (iii) requiring the county to pay, within appropriations available therefor, such amounts as shall be necessary to assure the continued operation and solvency of the agency, such payments to be determined and

paid in such manner and at such times as may be provided in such contract. To further the governmental and public purposes of the agency including the implementation of any contract or proposed contract contemplated by this title, the county and all other municipalities within the county shall have power to adopt and amend local laws imposing appropriate and reasonable limitations on competition, including, without limiting the generality of the foregoing, as to the municipalities within the county local laws requiring that all solid waste generated or originating within their respective boundaries, subject to such exceptions as may be determined to be in the public interest, shall be delivered to a specified solid waste management-resource recovery facility; provided, however, that the county shall not be empowered under this section to adopt any such local law requiring the delivery of solid waste to a specified solid waste management-resource recovery facility. Any such local law shall be adopted in accordance with the procedure provided by the municipal home rule law, except that no such local law shall be subject to either mandatory or permissive referendum.

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

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

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

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

HISTORY:

Add, L 1981, ch 932, § 1, eff July 31, 1981.

CROSS REFERENCES:

This section referred to in § 2045-e.

§ 2045-u. Solid waste facility reserve fund

The county legislature may establish a special fund, to be known as the

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

HISTORY:

Add, L 1981, ch 932, § 1, eff July 31, 1981.

CROSS REFERENCES:

Reserve fund for payment of bonded indebtedness in counties, cities, villages, towns and fire districts, CLS Gen Mun § 6-h.

§ 2045-v. Transfer of environmental applications, proceedings, approvals and permits

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

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

HISTORY:

Add, L 1981, ch 932, § 1, eff July 31, 1981.

§ 2045-w. Separability clause

If any section, clause or provision in this title shall be held by a competent court to be unconstitutional or ineffective in whole or in part, to