

ROSWELL PARK CANCER INSTITUTE CORPORATION ACT

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§ 3550. Short title. This title may be cited as the "Roswell Park Cancer Institute corporation act".

§ 3551. Legislative findings and purposes. The legislature hereby finds and declares as follows:

1. The Roswell Park Cancer Institute is a public hospital and medical research center in Buffalo owned and operated by the state of New York and its department of health. Roswell Park is the oldest cancer research and treatment facility in the country and one of the initial three comprehensive cancer centers designated in the 1971 National Cancer Act. The Institute's mission from its inception has focused on research and the translation of research findings to the clinical setting.

Ultimately, advances in prevention, detection, and treatment are transferred to the wider community through Roswell's leadership in national clinical trials, publications, medical training programs, and extensive outreach efforts to communities and hospitals across New York state.

2. Roswell Park also has a significant direct and indirect impact on the economy of Western New York.

3. From its founding in eighteen hundred ninety-eight, Roswell Park's contribution to New York's public health care system has been unparalleled.

4. The Institute has focused its scientific programs through the reallocation of resources and new emphasis being placed in the areas of immunology, structural biology and molecular genetics and genetic epidemiology. The advanced cancer care and specialized treatment modalities provided by Roswell Park are available at few other institutions in the country. These new cancer treatment techniques, therapies and inventions developed at Roswell Park have generated many of the basic therapies used today to treat cancer and have improved the cure rate of childhood cancer and certain common cancers including

prostate, colorectal and some skin cancers.

5. The combination of basic medical research with advanced clinical treatment practiced at Roswell Park Cancer Institute is unique, and the proper discharge of the research and education functions of the Institute requires that these functions continue to be partnered with state of the art clinical treatment capabilities.

6. New York state has made a strong commitment to maintaining the international leadership of Roswell Park. Two hundred forty-one million five hundred thousand dollars in bonds were issued for the major modernization project which will culminate in a new campus in nineteen hundred ninety-eight, the Institute's centennial year. Ultimately, the major modernization is designed to create an integrated and modern campus to meet the needs of a progressive, high technology cancer research and treatment center well into the twenty-first century.

7. However, this tangible commitment has occurred while the health care industry has experienced revolutionary changes which have significantly impacted health care in New York. For instance, the penetration of managed care and the formation of at least three large health care delivery systems in Western New York pose new competitive challenges for Roswell Park Cancer Institute. In order to meet the demands of the changing health care marketplace and to promote the strengths and capabilities of Roswell Park, the legislature concludes that the needs of the residents of the state of New York are best served by a change in the Institute's governance structure to afford it legal, financial, market and managerial flexibility.

8. Therefore, with the enactment of this legislation it is the intent of the legislature for Roswell Park to pursue its mission well into the twenty-first century, to retain its international leadership in specialized cancer therapies and to reinforce its already strong commitment to the greater Western New York community it serves and to continue to treat patients without regard to their ability to pay. The creation of the Roswell Park Corporation, as provided in this act, is in all respects for the public benefit of the people of New York, is a public purpose, and the exercise by such corporation of its functions, powers and duties constitutes the performance of an essential public and governmental function. The powers and authority granted by this act shall be construed to afford the Roswell Park Cancer Institute Corporation the flexibility required to accomplish its mission.

9. The legislature further finds and declares that the employees of the Roswell Park Cancer Institute have contributed to the success of its cancer research and treatment efforts, and will continue to be critical to its future success. Therefore, the provisions of this act which provide for civil service coverage, collective bargaining rights, retirement rights and other employee protections shall be construed to ensure that the rights of employees are protected.

§ 3552. Definitions. As used or referred to in this title, unless a different meaning clearly appears from the context:

1. "Board" shall mean the board of directors of the corporation as established by section thirty-five hundred fifty-three of this title.

2. "Bonds" shall mean the bonds, notes or other evidences of indebtedness issued by the corporation 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. "Corporation" shall mean the public corporation created by section thirty-five hundred fifty-three of this title, known as the Roswell Park

Cancer Institute Corporation.

4. "County" shall mean the county of Erie.

5. "Department" shall mean the department of health of the state of New York.

6. "Director" shall mean a voting director appointed to the board of Directors of the corporation pursuant to section thirty-five hundred fifty-three of this title.

7. "Health facility" shall mean a building, structure or unit or any improvement to real property, including all necessary and usual attendant and related equipment, facilities or fixtures, or any part or parts thereof, or any combination or combinations thereof, including, but not limited to, a general hospital, ambulatory clinic or center, chronic disease hospital, dispensary or laboratory or any other related facility, or any combination of the foregoing, constructed, acquired or otherwise provided by or for the use of the corporation or the state in providing basic medical research, health and medical services to the public.

8. "President" shall mean the president of the corporation selected by the board of directors.

9. "Transfer" shall mean the effective date of the contract between the corporation and the commissioner of health as authorized by subdivision two of section four hundred three of the public health law.

§ 3553. Roswell Park Cancer Institute Corporation. 1.(a) There is hereby created a corporation to be known as the Roswell Park Cancer Institute corporation which shall be a body corporate and politic constituting a public corporation.

(b) The corporation shall be governed by fifteen voting directors two of whom shall be the commissioner of health who shall serve ex-officio and the president of the corporation who shall serve ex-officio. Seven directors shall be appointed by the governor, two directors shall be appointed by the majority leader of the senate, two directors shall be appointed by the speaker of the assembly, one director shall be appointed by the minority leader of the senate and one director shall be appointed by the minority leader of the assembly.

(c) The terms of the directors, other than the commissioner of health and the president of the corporation, shall be three years, provided, however, that the initial terms of the directors shall be as follows:

(i) four of the directors appointed by the governor, five years;

(ii) three of the directors appointed by the governor, four years;

(iii) one of the directors appointed by the senate majority leader and one of the directors appointed by the speaker of the assembly, five years;

(iv) one of the directors appointed by the senate majority leader and one of the directors appointed by the speaker of the assembly, four years; and

(v) the directors appointed by the senate and the assembly minority leaders, three years. The commissioner of health and the president of the corporation shall serve as directors, ex-officio, only for so long as they shall occupy such offices.

2. (a) All directors shall hold office until their successors are appointed and qualify.

(b) Vacancies occurring otherwise than by expiration of term of office shall be filled for the unexpired terms in the manner provided for original appointment.

(c) The directors of the corporation shall receive no compensation for their services as directors, but shall be reimbursed for all their actual and necessary expenses incurred in connection with the carrying

out of the purposes of this title.

(d) The president of the corporation, sitting as director, shall not have any vote respecting the compensation or benefits to be paid to him or her.

(e) Notwithstanding any inconsistent provision of any general, special or local law, ordinance, resolution or charter, no officer, member or employee of the state or of any public corporation shall forfeit his or her office or employment by reason of his or her acceptance of appointment as a director of the corporation, nor shall service as such a director be deemed incompatible or in conflict with such office or employment.

3. (a) The chairperson of the board of directors shall be appointed by the governor; the president of the corporation shall not serve as chairperson.

(b) The powers of the corporation shall be vested in and shall be exercised by the board at a meeting duly called and held where a quorum of eight directors is present. No action shall be taken by the corporation except pursuant to the favorable vote of at least eight directors present at the meeting at which such action is taken.

(c) Any action required or permitted to be taken by the board or any committee thereof may be taken without a meeting if all members of the board or the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the board or committee shall be filed with the minutes of the proceedings of the board or committee.

(d) The members of the board or any committee thereof may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time; participation by such means shall constitute presence in person at a meeting.

(e) The board of directors shall establish a subcommittee of the board responsible for inspections of and investigations within the Roswell Park Cancer Institute, and such subcommittee shall not include the president of neither the corporation nor the commissioner of health.

4. The directors shall select and shall determine the salary and benefits of the president of the corporation. The directors shall have the authority to discharge the president with or without cause; provided, however, that removal without cause shall not prejudice the contract rights, if any, of the president.

5. The corporation shall have a president, a secretary, a treasurer, and such other officers as the board shall from time-to-time provide; such officers shall exercise the duties provided by the board or by this chapter.

6. The corporation and its corporate existence shall continue until terminated by law, provided, however, that no such termination shall take effect so long as the corporation 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 corporation, all of the rights and properties of the corporation then remaining shall pass to and vest in the state in such manner as prescribed by law.

7. The corporation may avail itself of the procedures prescribed under section one hundred four of the general municipal law for the utilization of the terms of state contracts, and the corporation may utilize the terms of a federal government general services contract where the terms are to the advantage of the corporation and have been

offered to the corporation by the contractor.

8. (a) For purposes of applying section eighty-seven of the public officers law to the corporation or its subsidiaries, the term "trade secrets" shall include marketing strategy or strategic marketing plans, analyses, evaluations and pricing strategies or pricing commitments of the corporation, relating to business development including strategic alliances and contracts for managed care and other network arrangements, capitation contracts, and other similar arrangements, which, if disclosed, would be likely to injure the competitive position of the corporation.

(b) In addition to the matters listed in section one hundred five of the public officers law, the corporation may conduct an executive session for the purpose of considering marketing strategy or strategic marketing plans, analyses, evaluations and pricing strategies or pricing commitments of the corporation, relating to business development including strategic alliances and contracts for managed care and other network arrangements, capitation contracts, and other similar arrangements relating to business development, which, if disclosed, would be likely to injure the competitive position of the corporation.

§ 3554. General powers of the corporation. Except as limited by this title, the public health law, the mental hygiene law, the social services law, the education law, the civil practice law and rules or any other applicable law or regulation, the corporation shall have power:

1. to sue and be sued and to participate in actions and proceedings, whether judicial, administrative, arbitratve or otherwise and, except as is otherwise provided in subdivision four of section thirty-five hundred sixty-one of this title, the court of claims shall have exclusive jurisdiction in all actions against the corporation for money damages;

2. to have a corporate seal, and to alter such seal at pleasure, and to use it by causing it or a facsimile to be affixed or impressed or reproduced in any other manner;

3. to purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;

4. to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of, mortgage, pledge, use and otherwise deal in and with, bonds and other obligations, shares, or other securities or interests issued by others, whether engaged in similar or different business, governmental, or other activities;

5. to accept subventions from other persons or any unit of government;

6. to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, or create a security interest in, all or any of its property or any interest therein, wherever situated, upon such terms and conditions and in such manner as the corporation shall determine;

7. to make capital contributions to other not-for-profit corporations;

8. (a) to offer participation in the New York state and local employees' retirement system for all its officers and employees, and to establish and carry out other retirement plans authorized pursuant to the retirement and social security law, which may be offered to all of its officers and employees not participating in the New York state and local employees' retirement systems, and to establish and carry out other incentive and benefit plans, trusts and provisions for any or all

of its officers and employees, subject to the applicable provisions of article fourteen of the civil service law; (b) provided, further, that employees of the corporation established pursuant to section thirty-five hundred fifty-three of this article who are division and department chairpersons holding scientific degrees, scientific faculty members such as assistant members, associate members, members, distinguished members, or who have graduate faculty status at the level of assistant professor or above at the Roswell Park graduate division of the state university of New York at Buffalo and as certified by the dean of the division, facility directors, and those employees who are in titles such as president and chief executive officer, senior vice president, vice president, assistant vice president, general counsel, and executive director, and who are eligible to participate in the New York state and local employees' retirement system may elect, within ninety days of the effective date of this paragraph or within ninety days of becoming eligible to participate in such system, in lieu of participating in such system, to participate in the optional retirement program available to employees of the state university of New York pursuant to article eight-B of the education law, subject to the terms and conditions of that article and to the provisions of the retirement and social security law;

9. to be a promoter, partner, member, associate or manager of other not-for-profit activities or business enterprises or ventures, or to the extent permitted in any other jurisdiction to be an incorporator of other corporations of any type or kind;

10. except as limited by state law or regulation, to fix, compromise and collect rates, rentals, fees, lease payments and other charges for the services rendered by it or for use of the facilities owned, controlled or administered by, or in the exercise of the powers of, the corporation;

11. to make contracts, give guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue notes, bonds and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property or any interest therein, wherever situated;

12. to issue bonds for any of its corporate purposes or its projects, or to refund the same, and to provide for the rights of the holders thereof;

13. to lend money, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

14. to conduct the activities of the corporation and have offices and exercise the powers granted by this title in any jurisdiction within or without the United States;

15. to appoint such officers, employees and agents as the corporation may require for the performance of its duties and, subject to applicable provisions of agreements negotiated pursuant to article fourteen of the civil service law, to fix and determine their qualifications, duties, and compensation;

16. to retain or employ counsel, auditors, and engineers, subject to applicable provisions of agreements negotiated pursuant to article fourteen of the civil service law where appropriate and, private consultants on a contract basis or otherwise for rendering professional, management or technical services and advice;

17. to make, adopt, amend, enforce and repeal rules for its governance and internal management and personnel practices, subject to article fourteen of the civil service law, where applicable;

18. to make and alter by-laws for its organization and management, and, subject to agreements with its bondholders, to make and alter rules and regulations governing the exercise of its powers and the fulfillment of its purposes under this title;

19. to designate the depositories of its money;

20. to establish its fiscal year;

21. to insure or otherwise to provide for the insurance of the corporation's property or operations and against such other risks as the corporation may deem advisable; and

22. to do all things necessary, convenient or desirable, including ancillary and incidental activities, to carry out its purposes and for the exercise of the powers granted in this title.

§ 3555. Special powers of the corporation. In order to effectuate the purposes of this title, the corporation shall have the following additional powers:

1. to contract with the state to operate, manage, superintend and control the Roswell Park Cancer Institute; and to establish, collect and adjust fees, rentals, and other charges for the lease or sublease of such health facility, subject to the terms and conditions of any contract, lease, sublease or other agreement with the state;

2. to provide health and medical services for the public directly or by agreement or lease with any person, firm or private or public corporation or association through or in the facilities of the corporation or in other health care facilities and to make internal policies governing admissions and health and medical services;

3. to provide and maintain training programs for resident physicians, post-graduate clinical fellows, graduate students and other allied health professionals;

4. to sponsor and conduct research, educational and training programs;

5. to participate in managed care networks, fee-for-service, and other joint and cooperative arrangements for the provision of general comprehensive and specialty health care services, directly or through contract with other service providers or entities including employees or entities of the state;

6. to establish subsidiary corporations or other entities in accordance with subdivision ten of this section:

(a) to meet the demands of health care delivery changes; and

(b) to market, manufacture or develop products or services developed by the corporation's clinical and research activities;

7. to affiliate with a medical college or colleges;

8. to contract to use employees, agents, consultants and facilities of the state, paying the state its agreed proportion of the compensation or costs pursuant to an agreement with the state;

9. to determine the conditions under which a physician may be extended the privilege of practicing within a health facility under the jurisdiction of the corporation, to promulgate internal policies for the conduct of all persons, physicians and allied health practitioners within such facility, and to appoint and grant privileges to qualified and competent clinical practitioners; and

10. except as provided in this subdivision or as expressly limited by any applicable state law or regulation, and in support of the powers granted by subdivisions five and six of this section, to form and to participate in the formation of one or more corporations, and to exercise and perform such purposes, powers, duties, functions or activities through one or more subsidiary corporations or other entities owned or controlled wholly or in part by the corporation, which shall be formed pursuant to the business corporation law, the limited liability

company law, the not-for-profit corporation law, or the partnership law; any such subsidiary may be authorized to act as a general or limited partner in a partnership or as a member of a limited liability company, and enter into an arrangement calling for an initial and subsequent payment or payments or contributions to capital by such subsidiary in consideration of an interest in revenues or other contractual rights. An entity shall be deemed a subsidiary corporation whenever and so long as (a) more than half of any voting shares or other membership interest of such subsidiary are owned or held by the corporation or (b) a majority of the directors, trustees or members of such subsidiary are designees of the corporation.

11. No subsidiary of the corporation shall own, operate, manage or control the existing research, education, acute inpatient or outpatient facilities and services now operated by the Roswell Park Cancer Institute.

§ 3556. Merit system; merit board. 1. Policy and applicable law. (a) Positions in the employ of Roswell Park Cancer Institute corporation shall be subject to section six of article five of the Constitution of the state of New York.

(b) Except as provided by this title and rules issued pursuant thereto, the corporation and its employees shall be subject to the provisions of the civil service law as the same shall be amended from time-to-time and employees of the corporation shall be deemed to have the rights of state employees for the purposes of such provisions of the civil service law.

2. Definitions. When used in this section:

(a) The term "classified service" means all positions in the corporation which are not in the unclassified service.

(b) The term "merit board" means the committee established by corporation's board of directors established by this title, which shall act in the capacity and fulfill the role of the "commission", "civil service commission" and "municipal civil service commission" for the purposes of applying the civil service law to positions in the corporation.

(c) The term "director of classification and compensation" or "director" means the director of classification and compensation of the Roswell Park Cancer Institute corporation.

(d) The term "jurisdictional classification" means the assignment of positions in the classified service to the competitive, noncompetitive, exempt or labor classes.

(e) The terms "position classification", "classification", "reclassification", and "classify" mean grouping together under common and descriptive titles positions that are substantially similar in the essential character and scope of their duties and responsibilities and required qualifications.

3. Roswell Park Cancer Institute merit board. (a) Three persons, other than directors, officers, employees or the president of the corporation, shall be selected by majority vote of the board for three-year terms and shall constitute the Roswell Park Cancer Institute merit board. The terms of the members of the merit board shall be staggered so that the term of one member expires each year. The members of the merit board shall annually elect one of the members chairperson.

(b) The members of the merit board shall receive their necessary travel and other expenses incurred in the performance of the duties of such office, and shall receive in addition such compensation for services rendered as members of such merit board as shall be determined by the board of directors of the corporation by vote of a majority of

the directors.

(c) The merit board shall prescribe and amend rules and regulations subject to the applicable provisions of article fourteen of the civil service law, for effecting the provisions of this title and of section six of article five of the Constitution of the state of New York, including but not limited to (i) rules for the jurisdictional classification of offices and positions in the classified service of the corporation; (ii) rules for examinations, appointments, promotions, transfers, leaves of absence, resignations and reinstatements; (iii) rules for sick leaves, vacations, time allowances and other conditions of employment in the classified service of the corporation; (iv) rules for the hearing and determination of appeals; and (v) rules designating positions in the non-competitive class which are confidential or require the performance of functions influencing policy.

(d) The merit board shall hear and determine appeals instituted by any person believing himself or herself aggrieved by any action or determination of the director of classification and compensation, acting as such; provided, however, that no appeal shall be allowed (i) if the action or determination involved relates solely to matters of internal management of the office of the director of classification and compensation, or (ii) if the action or determination involved was considered and approved in advance by the merit board. Any appeal authorized by this subdivision shall be instituted by filing with the secretary of the merit board a written notice of appeal stating the action or determination appealed from, the grounds for the appeal, and signed by the person or persons appealing or their representative; no particular form of appeal shall be required. Any such appeal shall be filed within thirty days following the appellant's receipt from the director of classification and compensation of notice of the action or determination to be reviewed; the merit board for good cause shown may waive such thirty-day limitation. The merit board may make such investigation or inquiry into the facts relative to the action or determination appealed from as may be deemed advisable, shall afford to the appellant and his or her representative an opportunity to be heard in person or in writing and to present evidence and argument. The merit board may affirm, modify or reverse such action or determination. The merit board shall decide each appeal filed within thirty days following the date on which the submission of facts, information and evidence is deemed complete by the merit board. The person seeking review and his or her representative shall be furnished a copy of the merit board's written decision concurrently with its filing with the secretary of the merit board. A decision of the merit board shall become final and binding when filed with the secretary of the merit board. Review of any such final decision shall be by a proceeding authorized by article seventy-eight of the civil practice law and rules; any such proceeding must be commenced within four months after the determination to be reviewed becomes final and binding.

(e) Before adopting any rule the merit board shall publish notice of the proposed rule no later than thirty days prior to the proposed effective date of such rule and shall afford an opportunity to any interested person to comment on the proposed rule.

(i) Publication of notice of proposed rule-making shall be accomplished by posting a copy on the main bulletin board of the corporation, by serving a copy of the notice by certified mail return receipt requested upon the designated representative of any employee union recognized to represent employees of the corporation and by mailing the copy of the notice to the temporary president of the senate

and the speaker of the assembly; publication shall be complete upon the posting and mailing. Notice made pursuant to this subparagraph shall be deemed to be in compliance with the notice requirements prescribed in section one hundred one-a of the executive law.

(ii) A notice of proposed rule-making shall contain the complete text of the proposed rule, and the last date upon which the merit board will receive comment upon the proposed rule; provided, however, that if the text of the proposed rule exceeds two thousand words the notice shall contain only a description of the subject, purpose and substance of such rule, and shall state from what person the complete text may be obtained.

(iii) The last date for submission of comments upon a proposed rule shall be not less than twenty days following the publication of notice of proposed rule-making.

(iv) The merit board may receive comments on a proposed rule in writing or, in an appropriate case, may conduct a hearing upon the proposed rule.

(v) Any rule adopted by the merit board shall take effect when signed by the chairperson of the merit board and filed with the secretary of the corporation. Notice of adoption of a rule shall be published concurrently with its adoption in the same manner as the notice of proposed rule-making.

(vi) In the exercise of its rule-making authority the merit board shall not be subject to the provisions of the state administrative procedure act.

(f) The secretary of the corporation shall be the secretary to the merit board and shall serve ex officio without vote. The secretary shall maintain minutes of the meetings of the merit board and shall maintain complete copies of the rules adopted by the merit board. Such minutes and rules shall be open to public inspection and copying during all ordinary business hours of the corporation in accordance with the applicable provisions of article six of the public officers law.

(g) The merit board shall, subject to the provisions of article seven of the public officers law, meet annually at the offices of the corporation, and shall hold such other meetings at such places within the state as may be required. A majority of the members of the merit board shall constitute a quorum.

4. Director of classification and compensation. (a) The director of classification and compensation of the corporation shall be in the competitive class of the classified service appointed by the president of the corporation. The director of classification and compensation shall not be a part of the office of human resources of the corporation.

(b) The director of classification and compensation shall be charged with the duty and shall have the power, subject to appeal to the merit board:

(i) to classify and reclassify all positions in the classified service of the corporation; and

(ii) to allocate and reallocate to an appropriate salary grade all positions in the competitive, noncompetitive and labor classes of the classified service of the corporation including temporary and seasonal positions; provided that notwithstanding any inconsistent provisions of section one hundred thirty of the civil service law, employees of the corporation in the classified service of the corporation shall also be deemed to be in the classified civil service of the state of New York for purposes of section one hundred thirty of the civil service law.

(c) The principle of fair and equal pay for similar work shall be followed in the classification and reclassification and the allocation

and reallocation of positions pursuant to this section and all positions having the same title shall be allocated to the same salary grade.

(d) The director of classification and compensation shall also have the following powers and duties:

(i) To ascertain and record the duties and responsibilities of all positions in the classified service of the corporation, establish adequate specifications showing the qualifications for and the nature and extent and scope of the duties and responsibilities of such positions, and assign uniform titles to positions that are so substantially similar in the essential character and scope of their duties and responsibilities and in the qualification requirements thereof that the same descriptive title may be used to designate them; that the same qualifications for appointment thereto may be reasonably required; that the same tests of fitness may be established, and that the same rate of compensation may be reasonably applied;

(ii) To investigate all matters affecting the classification and compensation of positions, to hear and determine all complaints and grievances with respect to the classification and compensation of positions, and from time to time to review the duties, responsibilities, qualification requirements and compensation of positions and to make such revisions in the classification or compensation of positions as changes in the service of the corporation may require;

(iii) To afford to any person aggrieved by the classification or allocation of a position a reasonable opportunity to present facts in support of or in relation to such classification or allocation, at a time and in such manner as may be specified by the director, and to render and furnish to the person aggrieved a written decision thereon.

(e) Any classification or reclassification of a position and any allocation or reallocation of a position to a salary grade made by the director pursuant to this section shall become effective on the date approved by the president of the corporation.

5. Authority to use services of New York state department of civil service. The merit board or the director may request of the New York state department of civil service technical advice and assistance in the administration of the provisions of this title for consideration, including but not limited to the preparation and administration of examinations, and in the absence of an eligible list of the corporation, may request the New York state department of civil service to furnish it with the names of persons on an appropriate eligible list. The merit board or the director shall provide such department with any information necessary to effectuate the provisions of this section.

6. Classes of position established. The classified service of the corporation shall comprise all offices and positions not included in the unclassified service. The offices and positions in the classified service of the corporation shall be divided into four classes designated as the exempt class, the non-competitive class, the competitive class, and the labor class.

(a) The exempt class shall consist of such positions and offices which the merit board shall determine to be impracticable to fill by competitive or non-competitive examination.

(b) The non-competitive class shall include all positions that are not in the exempt class or labor class and for which it is found by the merit board to be not practicable to ascertain the merit and fitness of applicants by competitive examination.

(c) The labor class shall comprise all unskilled laborers in the service of the corporation.

(d) The competitive class shall include all positions for which it is

found by the merit board to be practicable to determine the merit and fitness of applicants by competitive examination, and shall include all positions in the classified service of the corporation except such positions as are in the exempt class, the non-competitive class or the labor class.

7. Examinations. (a) The merit and fitness of applicants for positions which are classified in the competitive class shall be ascertained by such examinations as may be prescribed by the merit board. The merit board shall issue an announcement of each competitive examination or promotional examination, setting forth the minimum qualifications required, the subjects of the examination, and such other information as they may deem necessary, and shall advertise such examination in such manner as the nature of the examination may require.

(b) The merit board, acting by the director, shall require prospective applicants to file during a prescribed time a formal application in which the applicant shall state such information as may reasonably be required, touching upon the applicant's background, experience and qualifications for the position sought and his or her merit and fitness for service. The application shall be subscribed by the applicant and shall contain an affirmation by the applicant that the statements therein are true under the penalties of perjury. Application forms shall be furnished without charge to all persons requesting them.

8. Abolition of positions; demotion. (a) Where, because of economy, consolidation or abolition of functions, curtailment of activities or otherwise, positions in the competitive class of service of the corporation are abolished or reduced in rank or salary grade, suspension or demotion as the case may be among incumbents holding the same or similar positions within the same jurisdictional classification shall be made in the inverse order of original appointment on a permanent basis in the grade or title; provided, however, that upon the abolition or reduction of positions in the competitive class of service of the corporation incumbents holding the same or similar positions within the same jurisdictional classification who have not completed their probationary service shall be suspended or demoted as the case may be before any permanent incumbents, and among such probationary employees the order of suspension or demotion shall be determined as if such employees were permanent incumbents.

(b) Where, because of economy, consolidation or abolition of functions, curtailment of activities or otherwise, positions in the non-competitive class of service of the corporation are abolished or reduced in rank or salary grade, suspension or demotion as the case may be among incumbents holding the same or similar positions within the same jurisdictional classification shall be made in the inverse order of original appointment on a permanent basis in the grade or title; provided, however, that upon the abolition or reduction of positions in the non-competitive class of service of the corporation incumbents holding the same or similar positions within the same jurisdictional classification who have not completed their probationary service shall be suspended or demoted as the case may be before any permanent incumbents, and among such probationary employees the order of suspension or demotion shall be determined as if such employees were permanent incumbents.

(c) Upon the abolition or reduction of positions in the service of the corporation, suspension or demotion shall be made from among employees holding the same or similar positions within the same jurisdictional classification in the entirety of the corporation.

(d) In any case where an employee of the corporation is suspended or

demoted because of economy, consolidation or abolition of functions, curtailment of activities or otherwise, the director of classification and compensation shall, upon such suspension or demotion, furnish to the merit board a statement showing the employee's name, title or position, date of appointment and the date of and reason for suspension or demotion. The merit board shall place the name of such employee upon a preferred list together with others who may have been suspended or demoted from the same or similar positions in the same jurisdictional class in the service of the corporation, and shall certify such list for filling vacancies in the same jurisdictional class, first, in the same or similar position, second, in any position in a lower grade in line of promotion, and third, in any comparable position.

(e) For purposes of the civil service law, the date of original appointment of employees of the corporation shall be the date of original appointment on a permanent basis in the classified service of the corporation; except that for those employees who transfer from state service to the service of the corporation pursuant to section thirty-five hundred fifty-seven of this title, the date of original appointment shall be the date of original appointment on a permanent basis in the civil service of the state of New York.

9. Notwithstanding any inconsistent provision of section eighty-one of the civil service law, employees of the state who transfer to the corporation pursuant to subdivision one of section thirty-five hundred fifty-seven of this title shall be considered to be state employees under the jurisdiction of the state civil service commission for purposes of placement on and employment from preferred lists established by the state civil service commission.

10. Notwithstanding any inconsistent provisions of sections eighty-one-a and eighty-one-b of the civil service law, employees of the state who transfer to the corporation pursuant to subdivision one of section thirty-five hundred fifty-seven of this title shall be considered to be state employees for purposes of placement upon and employment from reemployment rosters pursuant to section eighty-one-a of the civil service law and for purposes of placement upon and employment from placement rosters pursuant to section eighty-one-b of the civil service law.

11. Reemployment rosters within the corporation. (a) Where an employee is to be suspended or demoted in accordance with subdivision eight of this section, the president of the corporation shall, upon such employee's suspension or demotion place the name of such employee upon a reemployment roster for filling vacancies in any comparable position as determined by the director of classification and compensation, except that employees suspended or demoted from positions in the non-competitive and labor classes may not be certified to fill vacancies in the competitive class. Such reemployment roster shall be certified for filling a vacancy in any such position before certification is made from any other list, including a promotion eligible list, but not prior to a preferred list. Eligibility for reinstatement of a person whose name appears on any such reemployment roster shall not continue for a period longer than four years from the date of suspension or demotion provided, however, in no event shall eligibility for reinstatement from a reemployment roster continue once the person is no longer eligible for reinstatement from a preferred list.

(b) The names of persons on a reemployment roster shall be certified therefrom with equal ranking for reinstatement.

(c) All reinstatements from a reemployment roster shall require completion of a probationary term in accordance with rules promulgated

by the merit board pursuant to subdivision two of section sixty-three of the civil service law.

(d) The merit board shall adopt rules providing for the relinquishment of eligibility for reinstatement upon reinstatement or upon failure or refusal to accept reinstatement from a preferred list or a reemployment roster.

(e) Notwithstanding any other provision of this title, the corporation may disqualify for reinstatement and remove from a reemployment roster the name of any otherwise eligible person who, by reason of physical or mental incapacity, is found to be unable to satisfactorily perform the duties of the position for which such roster has been established, or who has engaged in such misconduct as would warrant his or her dismissal from public employment, except that a person who is not completely physically incapacitated and who is suspended or demoted pursuant to section eighty or eighty-a of the civil service law because his or her position has been abolished or reduced, but who is certified for reinstatement to any position having the same physical requirements as the position from which such person was suspended or demoted, shall not be disqualified because of his or her incapacity, unless upon medical examination his or her incapacity has worsened to a degree that he or she would not be able to satisfactorily perform in such position. No person shall be disqualified pursuant to this subdivision unless he or she is first given a written statement of the reasons therefor and an opportunity to be heard at a hearing at which satisfactory proof of such reasons must be established by appropriate evidence, and at which such person may present independent evidence and be entitled to representation by counsel. The corporation shall designate a person to hold such hearing and report thereon.

(f) Notwithstanding any other provision of this title, any person may voluntarily remove his or her name from a reemployment roster by application to the corporation.

12. Placement rosters within the corporation. (a) Where an employee is to be suspended or demoted in accordance with subdivision eight of this section, the president of the corporation shall, upon such employee's suspension or demotion place the name of such employee upon a reemployment roster for filling vacancies in any comparable position as determined by the director of classification and compensation except that employees suspended or demoted from position in the non-competitive and labor classes may not be certified to fill vacancies in the competitive class. Such placement roster shall be certified for filling a vacancy in any such position before certification is made from any other list, including a promotion eligible list, but not prior to a preferred list or a reemployment roster. Eligibility for appointment of an employee whose name appears on any such placement roster shall terminate at such time as the employee is suspended or demoted in accordance with the provisions of subdivision eight of this section. Upon such employee's suspension or demotion, the corporation shall place the name of such employee upon a preferred list, and a reemployment roster as appropriate, in accordance with the provisions of subdivision eight of this section.

(b) The names of employees on a placement roster shall be certified therefrom with equal ranking for appointment.

(c) All appointments from a placement roster shall require completion of a probationary term in accordance with rules promulgated by the civil service commission pursuant to subdivision two of section sixty-three of the civil service law.

(d) The merit board shall adopt rules providing for the relinquishment

of eligibility for appointment upon appointment or upon failure or refusal to accept appointment from a placement roster.

(e) Notwithstanding any other provision of this title, any employee may voluntarily remove his or her name from a placement roster by application to the corporation.

13. Establishment of redeployment lists in the corporation; general provisions. (a) Notwithstanding any inconsistent provision of section seventy-nine of the civil service law, where, and to the extent that an agreement between the state and an employee organization entered into pursuant to article fourteen of the civil service law so provides, employees of the corporation shall be considered to be employees in state service for purposes of primary and secondary redeployment pursuant to section seventy-nine of the civil service law and the applicable collective bargaining agreement.

(b) Where, an employee in the corporation is to be suspended or demoted in accordance with the provisions of subdivision eight of this section by reason of the corporation's exercise of its right to contract out for goods and services, and receipt of the information required pursuant to subdivision eleven of this section for purposes of establishing reemployment rosters, at least ninety days prior to the suspension or demotion of an affected employee, the corporation shall place the name of the employee upon a redeployment list. Such redeployment list shall be certified for filling positions in the same title or in any comparable title, as determined by the director of classification and compensation, before certification is made from any other eligible list, placement roster, reemployment roster or preferred list.

(c) The names of persons on a redeployment list shall be certified therefrom for appointment in the order of their original appointments, in accordance with the provisions of paragraph (e) of subdivision eight of this section.

(d) A person appointed from a redeployment list shall receive at least the same salary such person was receiving in the position from which he or she is to be or has been suspended or demoted.

(e) Probationers who are appointed from a redeployment list to a position in the same title will be required to complete their probationary term. Employees who are appointed from a redeployment list to a position in a comparable title shall be required to complete a probationary term in accordance with the rules promulgated by the merit board pursuant to subdivision two of section sixty-three of the civil service law.

(f) Eligibility for appointment of an employee whose name appears on a redeployment list shall terminate at such time as the employee is redeployed pursuant to the provisions of this section to a position in the same salary grade as the position from which he or she has been suspended or demoted, or has exercised his or her reemployment rights pursuant to the provisions of section eighty-one or eighty-one-a of the civil service law, provided, however, that eligibility for appointment shall terminate no later than six months following the suspension or demotion of such employee in accordance with the provisions of section eighty or eighty-a of the civil service law. Upon such employee's suspension or demotion, the corporation shall place the name of such employee upon a preferred list, and a reemployment roster, as appropriate, in accordance with the provisions of subdivision eight of this section.

(g) Notwithstanding any other provision of this chapter, any employee may voluntarily remove his or her name from a redeployment list by

application to the corporation.

(h) (1) In the event the corporation determines, in accordance with the provisions of paragraph (b) of this subdivision, that there are no positions in the same title or any comparable title to which an employee to be suspended or demoted by reason of the state's exercise of its right to contract out for goods and services can be redeployed, the corporation may place the name of such employee on a special reemployment roster, for filling positions in titles for which the employee meets the essential tests and qualifications. Such special reemployment roster may be certified immediately upon the employee's placement on the roster for filling a position before certification is made from any other eligible list, including a promotion eligible list, but not prior to a redeployment list or preferred list.

(2) Eligibility for appointment of an employee whose name appears on a special reemployment roster shall not continue for a period longer than four years from the date of suspension or demotion, provided, however, that eligibility for appointment of an employee whose name appears on any such special reemployment roster shall terminate at such time as the employee is redeployed pursuant to the provisions of this section and, in no event, shall eligibility for appointment from a special reemployment roster continue once the employee is no longer eligible for reinstatement from a preferred list.

(3) Employees placed on a special reemployment roster in accordance with the provisions of this section, shall have all the rights and privileges provided employees placed on reemployment rosters in accordance with subdivision eleven of this section.

(i) The merit board shall adopt rules for carrying into effect the provisions of this section, including rules providing for the relinquishment of eligibility for appointment upon appointment or upon failure or refusal to accept appointment from a redeployment list. Additionally, notwithstanding any inconsistent provision of law, rule, or regulation, an agreement between the corporation and an employee organization recognized or certified pursuant to article fourteen of the civil service law can provide employment security rights and benefits where the state has exercised its right to contract out for goods and services. The merit board upon receipt of a written request of the director of the corporation is authorized to implement provisions of such agreement consistent with the terms thereof and, to the extent necessary, may adopt rules and regulations providing for the benefits to be thereunder provided. The merit board, with the approval of the president of the corporation, may extend such benefits in whole or in part, to corporation employees excluded from collective negotiating units.

§ 3557. Officers and employees; compensation; transfer. 1. On the effective date of the transfer of the operations of the Roswell Park Cancer Institute to the corporation pursuant to an agreement between the state and the corporation as authorized in this title, officers and employees of the state employed in Roswell Park Cancer Institute shall become officers and employees of the corporation; such persons transferred shall be deemed public officers or public employees as the case may be, in the civil service.

2. The civil service rights of such persons continuing in service of the corporation at the time of such transfer and for persons entering the service of Roswell Park Cancer Institute corporation following the date of transfer shall be governed by the civil service law and associated regulations except as otherwise provided pursuant to this title.

3. The salary or compensation of any such officer or employee, after such transfer, shall be paid by the corporation.

4. The corporation shall, upon transfer, acknowledge and give credit for all leave balances held by such officers and employees of the state who become officers or employees of the corporation on the date of transfer.

5. Notwithstanding any inconsistent provision of law for purposes of eligibility for promotional examinations offered for state employees generally, an employee of the corporation shall be entitled to all the rights thereto as if such employee was a state employee subject to the pertinent provisions of the civil service law.

§ 3558. Recognition and continuation of existing bargaining agents and units. 1. The employees of the corporation shall, for all purposes of article fourteen of the civil service law, be deemed to be employees of the state of New York and shall be employed within the current state of New York bargaining unit designations of either the professional, scientific and technical unit, the administration services unit, operational services unit, institutional services unit or security services unit. The governor's office of employee relations shall, for all purposes of article fourteen of the civil service law, act as agent for the corporation, and shall, with respect to the corporation, have all the powers and duties provided under sections six hundred fifty through six hundred fifty-four of the executive law. Those persons who become employees of the corporation pursuant to subdivision one of this section or who enter into the service of the corporation following the effective date of the transfer shall retain their current bargaining unit designations in either the professional, scientific and technical services unit, the administrative services unit, the institutional services unit, the operational services unit, the security services unit or the security supervisors unit of state employees. The corporation and the state shall recognize the existing certified or recognized employee organizations for state employees as the exclusive collective bargaining representatives for such employees.

Titles within collective bargaining units in existence prior to the transfer of operations to the corporation shall remain in those units and will not be altered by the public employment relations board without the consent of the corporation, the state and the recognized or certified representatives of the negotiating units involved. New titles created after the date of the transfer of operations to the corporation will be placed in the appropriate unit of state employees consistent with the provisions of article fourteen of the civil service law.

2. The corporation shall be bound by all collective bargaining agreements between the state of New York and such collective bargaining representatives, in effect as of the date of transfer of operations to the corporation and any successor agreements between such parties.

3. Nothing contained in this provision shall be construed to affect:

(a) the rights of employees pursuant to a collective bargaining agreement;

(b) the bargaining relationship between the executive branch of the state of New York and an employee organization;

(c) existing law with respect to an application to the public employment relations board seeking the designation of persons as managerial or confidential.

§ 3559. Transfer of property; relationship with the state; certain gifts, loans and guarantees by the state. 1. (a) The state may give, grant, sell, convey, loan, license the use of, or lease to the corporation and the corporation may accept any property which is useful

in connection with the exercise by the corporation of any of its powers under this title.

(b) Any such gift, grant, sale, conveyance, loan, license or lease shall be upon such terms and conditions, for such consideration, if any, and for such term or terms of years, subject to the rights of the holders of any bonds, as the corporation and the state may agree. No real property of the state consisting of any health facility currently operated by the state as Roswell Park Cancer Institute shall be transferred to the corporation, except subject to a right of first refusal in favor of the state and subject to a right of reverter in the event that the corporation should cease to use such property for the purpose of provision of research, education and health care.

2. In addition to the authority granted elsewhere in this title and by other applicable laws, the corporation and the state may enter into a contract or contracts from time to time providing for one or more of the following:

(a) the payment of sums for health care services provided by the corporation which could otherwise be provided directly by the state, including services for uncompensated care;

(b) services to be provided by the state to or on behalf of the corporation;

(c) the transfer of employees of the state to the corporation as provided in section thirty-five hundred fifty-seven of this title;

(d) indemnification by the corporation of the state for claims associated with establishment of and operation of the corporation and its health facilities;

(e) such other matters as may be appropriate to accomplish the purposes hereof.

Such contract or contracts shall include such terms and conditions, be for such consideration, if any, and have such term or terms of years, as the corporation and the state may agree.

§ 3560. Bonds or notes of the corporation. 1. The corporation shall have power as hereby authorized from time to time to issue negotiable bonds in conformity with applicable provisions of the uniform commercial code provided, however, that such power shall only be exercised to the extent authorized in the contract between the corporation and the department of health provided for in subdivision two of section four hundred three of the public health law. The corporation 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. Except as may otherwise be expressly provided by the corporation, every issue of new bonds shall be general obligations payable out of any moneys or revenues of the corporation, subject only to any agreements with the holders of particular bonds pledging any particular moneys or revenues.

2. Such bonds shall be authorized by resolution of the board, be in such denominations and shall bear such date or dates, mature at the time or times not exceeding forty years from their respective dates, 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 of redemption as such resolution or resolutions may provide. Such bonds may be sold at public or private sale for such price or prices as the corporation shall determine.

3. Such bonds may be issued for any corporate purposes of the

corporation.

4. Bonds issued by the corporation may be general obligations secured by the faith and credit of the corporation or may be special obligations payable solely out of particular revenues or other moneys as may be designated in the proceedings of the corporation under which the bonds shall be authorized to be issued, subject as to priority only to any agreements with the holders of outstanding bonds pledging any particular property, revenues or moneys. The corporation may also enter into loan agreements, lines of credit and other security agreements and obtain for or on its behalf letters of credit, insurance, guarantees or other credit enhancements to the extent now or hereafter available, in each case for securing its bonds or to provide direct payment of any costs which the corporation is authorized to pay.

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

(a) pledging all or any part of the moneys or property of the corporation to secure the payment of its bonds, including, but not limited to, the revenues of designated facilities of the corporation, the proceeds of any grant in aid of the corporation received from any private or public source, any federally guaranteed security and moneys received therefrom whether such security is initially acquired by the corporation or otherwise, any moneys received under the terms of any lease, loan or other agreement executed pursuant to this title, or any other revenues which may be received by the corporation;

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

(c) the purposes and limitations thereon to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied, including as authorized purposes, all costs and expenses necessary or incidental to the issuance of bonds, to the acquisition of or commitment to acquire any federally guaranteed security and to the issuance and obtaining of any federally insured mortgage note;

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

(e) 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;

(f) the creation of special funds into which any moneys of the corporation may be deposited;

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

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

(i) any other matters, of like or different character, which in any

way affect the security and protection of the bonds.

6. (a) The bonds of the corporation issued pursuant to this section shall be sold to the bidder offering the lowest true interest cost, taking into consideration any premium or discount.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, whenever in the judgment of the corporation the interests of the corporation will be served thereby, the directors of the corporation, on the written recommendation of the chairperson may authorize the sale of such bonds at private or public sale on either a competitive or negotiated basis. The corporation shall set guidelines governing the terms and conditions of any such private or public sales. The private or public bond sale guidelines set by the corporation shall include, but not be limited to, a requirement that where the interests of the corporation will be served by a private or public sale of bonds, the corporation shall select underwriters for each private or public bond sale conducted pursuant to a request for proposal process undertaken from time to time and consideration of proposals from qualified underwriters as determined by the corporation. Bonds of the corporation shall not be sold by the corporation at a 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.

(c) The corporation shall have the power from time to time to amend such private bond sale guidelines in accordance with the provisions of this subdivision.

(d) The corporation shall annually prepare and approve a bond sale report which shall include the private or public bond sale guidelines as specified in this subdivision, amendments to such guidelines since the last private or public bond sale report, an explanation of the bond sale guidelines and amendments, and the results of any sale of bonds conducted during the fiscal year. Such bond sale report may be a part of any other annual report that the corporation is required to make.

(e) The corporation shall annually submit its bond sale report to the state comptroller, the senate finance committee and the assembly ways and means committee.

(f) The corporation shall make available to the public copies of its bond sale report upon reasonable request thereof.

(g) Nothing contained in this subdivision shall be deemed to alter, affect the validity of, modify the terms of, or impair any contract or agreement made or entered into in violation of, or without compliance with, the provisions of this subdivision.

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

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

(b) limitations on the right of the corporation to restrict and regulate the use of the project or part thereof in connection with which bonds are issued;

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

(d) limitations on the power of the corporation to sell or otherwise dispose of any project or any part thereof or other property;

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

(f) 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 corporation may determine; and

(g) 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 the bondholders.

8. In addition to the powers herein conferred upon the corporation to secure its bonds, the corporation shall have the power in connection with the issuance of bonds to adopt resolutions and enter into such trust indentures, agreements or other instruments as the corporation may deem necessary, convenient 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 corporation would have the right to do in the absence of such resolutions, trust indentures, agreements or other instruments. The corporation shall have power to enter into amendments of any such resolutions, trust indentures, agreements or other instruments within the powers granted to the corporation by this title and to perform the obligations undertaken in such resolutions, trust indentures, agreements or other instruments. The provisions of any such resolutions, trust indentures, agreements or other instruments may be made a part of the contract with the holders of bonds of the corporation.

9. 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 corporation 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 corporation irrespective of whether 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.

10. Whether or not the bonds of the corporation 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.

11. Neither the directors nor the officers of the corporation nor any person executing its bonds shall be liable personally on its bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

12. Subject to such agreements with bondholders as may then exist, the corporation shall have power out of any funds available therefor to purchase bonds of the corporation, in lieu of redemption, at a price not exceeding, if the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date, or, 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. Bonds so purchased shall thereupon be canceled.

13. The corporation shall have power and is hereby authorized to issue negotiable bond anticipation notes in conformity with applicable

provisions of the uniform commercial code and may renew the same from time to time but the maximum maturity of any such note, including renewals thereof, shall not exceed five years from the date of issue of such original note.

§ 3561. Remedies of bondholders. Subject to any resolution or resolutions adopted pursuant to this title:

1. In the event that the corporation 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 corporation 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 in which the principal office of the corporation is located 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 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 corporation to collect rents, rates, fees and charges adequate to carry out any agreement as to, or pledge of, such rents, rates, fees and charges and to require the corporation 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 corporation 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 the 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 suit, action or proceeding by the trustee on behalf of the bondholders. The venue of any such suit, action or proceeding shall be laid in Erie county.

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

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 any 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 the holders of such bonds, shall take possession of all moneys and other property derived from such part or parts of the project and

proceed with any construction thereon or the acquisition of any property, real or personal, in connection therewith that the corporation 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 or agreement with bondholders relating thereto and perform the public duties and carry out the agreements and obligations of the corporation under the direction of the court. In any suit, action or proceeding by the trustee, the fees, counsel fees and expenses of the trustee and of the receiver, if any, shall constitute taxable disbursements and all costs and disbursements allowed by the court shall be a first charge on any revenues derived from the properties.

§ 3562. State not liable on corporation bonds. The state shall not be liable on the bonds or notes of the corporation and such bonds or notes shall not be a debt of the state, and such bonds and notes shall contain on the face thereof a statement to such effect.

§ 3563. Moneys of the corporation. All moneys of the corporation from whatever source derived shall be paid to the treasurer of the corporation and shall be deposited forthwith in a bank or banks designated by the corporation. The moneys in such accounts shall be paid out on check of the treasurer upon requisition by such person or persons as the corporation 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 any municipality of a market value equal at all times to the amount on deposit and all banks and trust companies are authorized to give such security for such deposits. To the extent practicable, consistent with the cash requirements of the corporation, all such moneys shall be deposited in interest bearing accounts. The corporation 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 corporation 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 corporation and all banks and trust companies are authorized to give such security for such deposits. Any moneys of the corporation not required for immediate use or disbursement may, at the discretion of the corporation, 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 the approval of the comptroller, the corporation shall prescribe a system of accounts.

§ 3564. Bonds; legal investment for fiduciaries. The bonds of the corporation are hereby made securities in which all public officers 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 saving associations, including savings and loan associations, building 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 the 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.

§ 3565. Agreement with state. The state does hereby pledge to and agree with the holders of any bonds issued by the corporation pursuant to this title and with those persons or public corporations who may enter into contracts with the corporation pursuant to the provisions of this title that the state will not alter, limit or impair the rights hereby vested in the corporation to purchase, construct, own and operate, maintain, repair, improve, reconstruct, renovate, rehabilitate, enlarge, increase and extend, or dispose of any project, or any part or parts thereof for which bonds of the corporation 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 contracts or agreements made with or for the benefit of the holders of bonds or with any person or public corporation with reference to such project or part thereof, or in any way to impair the rights and remedies of the holders of bonds, until the bonds, together with interest thereon, including interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders of bonds, are fully met and discharged and such contracts are fully performed on the part of the corporation, provided, however, that the state reserves the right to adjust its medicaid rates in accordance with applicable law and implementing regulations, if any. The corporation shall include this pledge and agreement of the state in any agreement with the holders of bonds. In no event shall the provisions of this section limit the applicability and enforceability of any and all terms and conditions included in any contract or contracts entered into pursuant to subdivision two of section four hundred three of the public health law.

§ 3566. Tax exemption and tax contract by the state. 1. It is hereby determined that the creation of the corporation and the fulfillment of its corporate purposes is in all respects for the benefit of the people of the state of New York and is a public purpose. Accordingly, the corporation shall be regarded as performing an essential governmental function in the exercise of the powers conferred upon it by this title, and the corporation shall not be required to pay any fees, taxes, special ad valorem levies or assessments of any kind, except as provided pursuant to the public health law, whether state or local, including but not limited to fees, taxes, special ad valorem levies or assessments on real property, franchise taxes, sales taxes, transfer taxes, mortgage taxes or other taxes, upon or with respect to any property owned by it or under its jurisdiction, control or supervision, or upon the uses thereof, or upon or with respect to its activities or operations in furtherance of the powers conferred upon it by this title, or upon or with respect to any fares, tolls, rentals, rates, charges, fees, revenues or other income received by the corporation. Provided however, that the corporation shall continue to pay any fee, charge, assessment or payment in lieu of taxes which had been heretofore paid by the state in conjunction with the operation of Roswell Park Cancer Institute at the effective date of transfer.

2. Any bonds issued pursuant to this title together with the income therefrom shall at all times be free from taxation.

3. The state hereby covenants with the purchasers and with all subsequent holders and transferees of bonds issued by the corporation pursuant to this title, in consideration of the acceptance of and payment for the bonds, that the bonds of the corporation issued pursuant

to this title and the income therefrom shall at all times be free from taxation.

4. The corporation may pay, or may enter into agreements with any municipality to pay, a sum or sums annually or otherwise or to provide other considerations with respect to real property owned by the corporation located within such municipality.

§ 3567. Actions against the corporation. 1. Except in an action for wrongful death, an action or proceeding under article fourteen of the civil service law or section thirty-five hundred fifty-six of this title, no action or special proceeding shall be prosecuted or maintained against the corporation, its members, officers or employees for personal injury or damage to real or personal property alleged to have been sustained by reason of the negligence, tort or wrongful act of the corporation or of any member, officer, agent or employee thereof, unless: (a) notice of claim shall have been made and served upon the corporation within the time limit set 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, (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, and (d) an action, against the corporation 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.

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

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

5. The rate of interest to be paid by the corporation upon any judgment for which it is liable, other than a judgment on its bonds, shall be the rate prescribed by section one of chapter five hundred eighty-five of the laws of nineteen hundred thirty-nine, as amended. 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.

6. All actions or proceedings against the corporation for breach of contract, express or implied, or for the torts of its directors,

officers or employees while acting as such directors, officers or employees, except for any action brought by a trustee pursuant to section thirty-five hundred sixty-one of this title, shall be brought in the court of claims.

§ 3568. Audit and annual reports. 1. In conformity with the provisions of section five of article ten of the constitution, the accounts of the corporation shall be subject to the supervision of the state comptroller.

2. The corporation annually shall cause an independent certified public accountant to perform an audit of the corporations accounts and to prepare a financial statement, income statement, and balance sheet of the corporation.

3. The corporation shall annually prepare a detailed report pursuant to the provisions of section twenty-eight hundred of this chapter.

4. (a) The corporation shall also report on an annual basis the following information: the name, principal business address and principal business activities of each subsidiary of the corporation; the name of all partners, managers, board members and officers of each subsidiary; the number of employees of each subsidiary; a list of all contracts in excess of one hundred thousand dollars entered into by the corporation and its subsidiaries identifying the amount, purpose and duration of such contract; and a financial statement, income statement, and balance sheet of each of the corporation's subsidiaries, prepared by an independent certified public accountant all in accordance with generally accepted accounting principles.

(b) The corporation shall also report no less than quarterly its income, expenses and relevant fiscal, programmatic and clinical data.

5. All such reports and financial statements shall be furnished to the governor, the comptroller, the majority leader of the senate, the speaker of the assembly, and to the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee.

§ 3569. Defense and indemnification. The provisions of sections seventeen and nineteen of the public officers law shall be applicable to employees of the corporation (as such term is defined in sections seventeen and nineteen of the public officers law) pursuant to subdivision two of such section; provided, however, that nothing contained within this section shall be deemed to permit the corporation to extend the provisions of sections seventeen and nineteen of the public officers law upon any independent contractor.

§ 3570. Transfer of applications, proceedings, approvals and permits.

1. Any application, review or process in relation to or in furtherance of the purposes of or contemplated by this title heretofore filed or undertaken, or any proceeding heretofore commenced or any determination, finding or award made, by the state or by the state with the federal government, the state department of health, or any other public corporation, shall inure to and for the benefit of the corporation to the same extent and in the same manner as if the corporation has been a party to such application, review, process, or proceeding from its inception, and the corporation shall be deemed a party thereto, to the extent not prohibited by any federal law. Any license, approval, permit, determination, finding, award or decision heretofore or hereafter issued or granted pursuant to or as a result of any such application, review, process or proceeding shall inure to the benefit of and be binding upon the corporation and shall be assigned and transferred by the state to the corporation unless such assignment and transfer is prohibited by federal law.

2. All such applications, proceedings, licenses, approvals, permits,

determinations, findings, awards and decisions shall further inure to and for the benefit of and be binding upon any person leasing, acquiring, financing, constructing, maintaining, operating, using or occupying any facility transferred by the state to the corporation pursuant to this title.

§ 3571. Separability. If any clause, sentence, paragraph, section, or part of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof involved in the controversy in which such judgment shall have been rendered.

§ 3572. Applicability of law. The provisions of this title shall be subject to the provisions of the civil practice law and rules, the public health law, the mental hygiene law, the social services law, the education law and any other applicable law or regulation, including any amendment thereto provided, however, nothing in this section shall require the state or corporation to seek approval or consent for any transfer pursuant to sections thirty-five hundred fifty-seven and thirty-five hundred fifty-nine of this title.

§ 3573. Moneys received; department of health. Notwithstanding any provision of this article or any other provision of law to the contrary, so long as bonds issued by the dormitory authority to finance facilities for the department of health of the state of New York remain outstanding as defined in the bond resolution under which such bonds were issued, the following provisions shall be applicable:

1. All moneys derived or resulting from the care, maintenance and treatment of patients at Roswell Park Cancer Institute or any other health facility owned or operated by the corporation or a subsidiary thereof, together with moneys received from fees, including parking fees, refunds, reimbursements, sales of property and miscellaneous receipts of the corporation or its subsidiaries attributable to Roswell Park Cancer Institute and other revenues of the corporation or its subsidiaries (other than gifts, grants, bequests and moneys received under research contracts, and clinical practice income received pursuant to a clinical practice plan established pursuant to subdivision fourteen of section two hundred six of the public health law) and any other net revenues received by the corporation from any of its subsidiaries or other entities shall be moneys of the department of health, whether collected or received by such corporation or any of its subsidiaries, and shall be paid into the health income fund as required by section four hundred nine of the public health law. Such corporation or any subsidiary created hereunder shall receive any moneys of the department of health described herein as agent of the department of health and shall pay such moneys to the commissioner for deposit into the health income fund.

2. Neither the corporation nor any subsidiary thereof shall create or permit to be created any pledge, assignment, encumbrance or security interest in any moneys of the department of health required to be deposited or maintained in the department of health income fund pursuant to section four hundred nine of the public health law or any agreement between the department of health and the dormitory authority, including investments and proceeds thereof, or the right of the department of health to receive or collect the same.

3. The state shall not give, grant, sell or convey, loan, license the use of or lease any property to the corporation or any subsidiary thereof except in compliance with the terms of any lease, sublease or other agreement between the dormitory authority and the department of

health of the state of New York.

4. Neither the corporation nor any subsidiary thereof shall take any action, or suffer any action to be taken, which would adversely affect the exclusion of interest on any of the bonds issued by the dormitory authority to finance facilities for the department of health of the state of New York from gross income for purposes of federal income taxation. The department of health shall provide oversight of the corporation's adherence to this subdivision as more fully described in the agreement set forth in subdivision two of section four hundred three of the public health law.

5. No power conferred upon the corporation or any subsidiary thereof by this article or any other provision of law shall be exercised in a manner that is inconsistent with the terms of any lease, sublease or other agreement between the dormitory authority and the department of health of the state of New York.

6. No lien granted by the corporation or any subsidiary thereof pursuant to this title shall give any lienor the right to compel the sale of any health facility which is currently owned by the state or the dormitory authority and which comprises the Roswell Park Cancer Institute.