

LAWS OF NEW YORK, 1979
CHAPTER 688

AN ACT to create the Nelson A. Rockefeller Empire State Plaza performing arts center corporation to provide for the organization, powers and duties thereof, to amend the state finance law, in relation to the acquisition of funds for the support thereof and making an appropriation therefor

Became a law July 13, 1979, with the approval of the Governor. Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings and declaration. 1. It is hereby found that there continues to exist a need for a performing arts center in the city of Albany, as determined by the temporary state commission on the capital city created by chapter three hundred nineteen of the laws of nineteen hundred sixty-one.

2. It is further found that a performing arts center designed to serve public purposes and uses in the capital city and the surrounding region as well as state purposes and uses has been constructed as a part of the Nelson A. Rockefeller Empire State Plaza in the city of Albany. The performing arts center is the ellipsoidal structure which houses the nine hundred fifty seat auditorium and the five hundred seat recital hall and other facilities herein described.

3. It is further found that the performing arts center, located at the capital, should symbolize the preeminence of the performing arts in New York state and be a visible commitment of the state to pioneering and supporting the maintenance and development of the arts while making programs more accessible to the general public.

4. It is further found that the most effective administration of such a facility requires expert and experienced management and a mechanism to involve a broad spectrum of citizen and corporate sponsors, performing arts groups and volunteers.

5. It is therefore found and declared that these objectives can best be met through the establishment of a corporation to be known as the Nelson A. Rockefeller Empire State Plaza performing arts center corporation and that the powers and duties of the corporation defined in this act are necessary and proper for the achievement of these ends.

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

1. The term "city" shall mean the city of Albany.

2. The term "county" shall mean the county of Albany.

3. The term "Nelson A. Rockefeller Empire State Plaza" shall mean the governmental complex constructed and occupied by the state of New York in the city of Albany under an agreement with the county of Albany pursuant to chapter one hundred fifty-two of the laws of nineteen hundred sixty-four

4. The term "performing arts center" shall mean the ellipsoidal structure erected and equipped for performing arts and other audience-related events; together with adjoining associated spaces at other levels for storage, rehearsal lounges and dressing rooms, and auxiliary space facilities in the same area to be used for related purposes.

5. The term "manage" shall mean the selecting, scheduling, promoting and conducting of events, establishing and collecting rates and charges for use of the facilities, adopting rules and regulations governing the use of the facilities, arranging for the sale of tickets, and taking all necessary and appropriate steps

EXPLANATION—Matter in *italics* is new; matter in brackets [] is old law to be omitted.

for the successful conduct of the events in the performing arts center facility under the jurisdiction of the corporation.

§ (3) Nelson A. Rockefeller Empire State Plaza performing arts center corporation. 1. A corporation to be known as the Nelson A. Rockefeller Empire State Plaza performing arts corporation is hereby created. Such corporation shall be a body corporate and politic constituting a public benefit corporation and its existence shall commence upon the appointment of the members of the board of directors as herein provided. It shall have the powers and privileges of a corporation and all of its business shall be transacted, all funds invested, all warrants for money drawn and payments made, and all cash and securities and other personal and real property shall be held under its corporate name.

2. The corporation shall consist of a board of directors comprised of a chairperson and eight other members. The chairperson of the board shall be designated by the governor. The board of directors shall consist of the state commissioner of general services; the state director of the budget; the chairperson of the state council on the arts; two members to be appointed by and serve at the pleasure of the governor; a member to be appointed and serve at the pleasure of the temporary president of the senate; a member to be appointed and serve at the pleasure of the speaker of the assembly; a member to be appointed and serve at the pleasure of the mayor of the city of Albany; and a member to be appointed and serve at the pleasure of the county executive of the county of Albany. The members first appointed by the governor and the city and the county shall serve for a period of two years; their successors and all other appointed members shall serve for a four-year term and each member shall continue to serve until the appointment and qualification of his or her successor. Vacancies among members otherwise than by the expiration of term shall be filled by the appointing authority for the unexpired term. The chairperson and other members of the board shall not be entitled to compensation for their services but shall be entitled to reimbursement for their actual and necessary expenses incurred in the performance of their official duties. A majority of the chairperson and other members of the board shall constitute a quorum for the transaction of the business of the corporation. The board may delegate to the chairperson, one or more of its members or to its officers, agents and employees such powers and duties as it may deem proper.

3. No member, officer or employee of the corporation shall be disqualified from holding any other public office or employment, nor shall he or she forfeit any such office or employment by reason of his or her appointment hereunder, notwithstanding the provisions of any general, special or local law, ordinance, city or county charter.

4. The corporation shall continue until all its liabilities have been met or otherwise discharged and until its existence shall have been terminated by law. Upon the termination of the existence of the corporation, all of its rights and property shall pass to and be vested in the state.

5. The corporation shall hold regular quarterly meetings and shall hold special meetings on the call of the chairperson or any three members upon giving notice thereof to all members of the corporation at least twenty-four hours in advance. All meetings shall be held and notices filed in accordance with the freedom of information act.

(6) There shall be an executive director of the center appointed by the corporation who shall also serve as secretary to the corporation.

(7) The executive director and all other employees of the center shall be employees of the state of New York and shall be members of the unclassified service as provided in the general statutes, as amended, unless otherwise provided by law.

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8. The executive director shall be the chief executive officer of the center and shall, subject to the direction of the corporation, have general supervision over the administration and operation of center projects and facilities and shall appoint and remove all other officers and employees of the center as prescribed by the rules and regulations to be enacted by the corporation. The executive director shall attend all corporation meetings and shall have the right to speak at such meetings, but shall have no vote.

9. The executive director may be removed from office by a majority vote of the corporation.

§ 4 Purpose of the corporation. The corporation shall have sole discretion in the management of the performing arts center facilities in providing space and developing programs for civic, governmental, performing arts and other cultural and public events, and related uses for the benefit of the citizens of New York state and the departments and agencies of state government. It shall provide a permanent residence for the Empire State Youth Theater Institute, an instructional component of the state university of New York created pursuant to chapter eight hundred twenty-six of the laws of nineteen hundred seventy-four.

§ 5. General powers and duties of the corporation. For carrying out its purposes, the corporation shall have power:

1. To sue and be sued;
2. To have a seal and alter the same at pleasure;
3. To acquire, hold and dispose of personal property for its corporate purposes, including the power to purchase, alter, install and dispose of fixtures, installations and equipment used in connection with the meeting center provided however that any such action that alters the design or structure of the center and any fixture, installation or equipment which may be disposed of valued in excess of five thousand dollars is subject to a resolution which must be approved by a majority of the board of directors at a meeting and such resolution must be approved by the director of the budget.
4. To lease or sublease the meeting center facilities and other real property from the state and others for such terms and on such conditions as may be agreed upon and, subject to the provisions of such lease or leases, to sublease said property to others;
5. To appoint officers, agents and employees and to prescribe their qualifications and to fix their compensation.
6. Subject to terms and limitations of leases or contracts for use of the performing arts center facilities, to manage and operate such facilities in respects necessary or convenient for accomplishment of the corporation's purposes; to contract for the operation or maintenance of any parts thereof and for services to be performed; to rent parts thereof and grant concessions; and to fix and collect rental, fees and other charges on such terms and conditions as it may determine;
7. To make all contracts necessary and convenient to carry out its purposes, and to execute all instruments necessary and convenient;
8. To use the services of state, city and county employees and agents and utilize their facilities, paying the corporation's agreed upon proportion of the compensation or costs thereof;
9. To accept gifts, grants, loans or contributions from the United States, the state of New York, or any agency or instrumentality of either of them, or the city, the county or an individual, foundation, firm or corporation, by bequest or otherwise, and to expend the proceeds for any purposes of the corporation;
10. All contributions of real or personal property made to the fund whether by

gift, devise or bequest shall qualify as deductions in computing the net taxable income of the donor for the purposes of any income tax imposed by the state or any political subdivision thereof;

11. To submit reports to the governor, chairman of the senate finance committee, the chairman of the assembly ways and means committee and the state comptroller in the manner set forth in section ten of this act;

12. To do all things necessary or convenient to carry out the functions, powers and duties expressly set forth in this act.

§ 6. Cooperation and assistance of other agencies. To effect the purposes of this act, the corporation may request from any department, division, commission or other agency of the state and the same are authorized and directed to provide such cooperation and assistance, services and data as would enable the corporation properly to carry out its powers and duties hereunder.

§ 7. Cooperation of the office of general services. The state office of general services shall have responsibility for repair, maintenance, heating, cooling, custodial services and other support necessary to assure and preserve the safety, efficiency, structural soundness and aesthetic appearance of the center and related appurtenances and equipment.

§ 8. Annual report. For the purposes of furnishing the state with systematic information regarding its status and activities, the corporation shall submit to the governor, the chairman of the senate finance committee, the chairman of the assembly ways and means committee and the state comptroller, within ninety days after the end of the corporation's fiscal year, a complete and detailed report setting forth: (1) its operations and accomplishments; (2) its receipts and disbursements, or revenues and expenses, during such fiscal year, in accordance with categories or classifications established by the commission for its own operating and capital outlay purposes; and (3) its assets and liabilities at the end of its fiscal year including the status of reserve, special or other funds and including the receipts and payments of these funds.

§ 9. Tax exemptions. It is hereby found, determined and declared that the creation of the corporation and the carrying out of its corporate purposes is in all respects for the benefit of the residents of the city and county and the people of the state of New York and is a public purpose, and the corporation shall be regarded as performing a governmental function in the exercise of the powers conferred upon it by this act and shall be required to pay no taxes or assessments upon any of the property acquired by or under its jurisdiction, control or supervision or upon its activities.

§ 10. Examination of corporation records by the state comptroller. Notwithstanding any other provision of this article, the state comptroller shall, from time to time but not less than once in every five years, examine the books and accounts of the corporation including its receipts, disbursements, contracts, leases, sinking funds, investments and any other matters relating to its financial standing.

§ 11. Inconsistent provisions in other acts superseded. Insofar as the provisions of this act are inconsistent with the provisions of any other act, general or special or of any local law of the city or county, the provisions of this act shall be controlling.

§ 12. The corporation shall annually submit a proposed budget to the director of the budget in September at the same time as budget requests are required to be submitted by state departments. The proposed budget shall contain an operating budget, an equipment budget and an estimate of revenues.

The corporation shall also submit annually a request to the office of general services for maintenance needs. The office shall include such request as an

integral part of that agency's overall budget request that is submitted to the director of the budget.

§ 13. The state finance law is amended by adding a new section ninety-seven-s to read as follows:

§ 97-s. *Nelson A. Rockefeller Empire State Plaza performing arts center corporation fund.* 1. There is hereby established in the custody of the state comptroller a special account to be known as the "performing arts center corporation fund" Ac

2. All moneys of the corporation from whatever source derived shall be deposited to the credit of such fund. Said moneys shall be kept separate and shall not be commingled with any other moneys in the custody of the comptroller.

3. The moneys in said account shall be retained by it and deposited in a general account and such other accounts as the corporation may deem necessary for the transaction of its business and shall be paid out on checks signed by the chairperson of the corporation or by such other member or officer as the corporation may authorize. Cbs

4. Notwithstanding any other provision of law, expenditures from this appropriation are to be reimbursed by the revenue received from the commercial retail leases in the Nelson A. Rockefeller Empire State Plaza, revenues received from rentals of the performing arts center and related facilities and revenue from any other fees and charges and any other funds so designated. X

§ 14. Separability. If any section, clause or provision of this act shall be unconstitutional or be ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective it shall be valid and effective and no other section, clause or provision shall on account thereof be deemed invalid or ineffective.

§ 15. The sum of five hundred thousand dollars (\$500,000), or so much thereof as may be necessary, is hereby appropriated in the first instance to the Nelson A. Rockefeller Empire State Plaza performing arts center corporation fund out of moneys in the state treasury in the general fund to the credit of the state purposes fund not otherwise appropriated, and shall be immediately available to the corporation for its expenses, including personal service and travel, operation and maintenance in carrying out the provisions of this act. Such moneys shall be payable on the audit and warrant of the comptroller on vouchers certified or approved by the chairperson of the corporation or by an officer or employee of the corporation designated by the chairperson. X

§ 16. This act shall take effect immediately