

CHAPTER 824

8/31/1933

AN ACT creating Buffalo and Fort Erie Public Bridge Authority providing for its appointment and defining its jurisdiction, powers and duties; authorizing it to issue and sell or exchange its bonds and authorizing their use for certain purposes; authorizing it to acquire all the assets and property of the Buffalo and Fort Erie Public Bridge Company; authorizing it to maintain and operate such property and assets and to charge tolls for the use thereof and to acquire other assets; authorizing it to exercise authority, powers and duties not inconsistent herewith, granted by the Dominion of Canada, and generally to define its purposes and to provide for the exercise of its powers

Became a law August 31, 1933, with the approval of the Governor. Passed, on message of necessity, three-fifths being present

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

Buffalo and Fort Erie Public Bridge Authority created.

Section 1. Buffalo and Fort Erie Public Bridge Authority. A board to be known as Buffalo and Fort Erie Public Bridge Authority is hereby created which shall be a body corporate and politic, constituting a public benefit corporation, to consist of nine members.

§ 2. The board shall constitute the municipal corporate instrumentality of the state of New York, for the purpose of carrying out the provisions of this act. The board is hereby authorized and empowered to act for and become the agency or instrumentality, corporate or otherwise, of the Dominion of Canada, with like duties and authority, or with such duties, powers, authority and purposes as may be determined by the Dominion of Canada with reference to the lands, bridges, terminals, approaches and properties within the Dominion of Canada connected with or usable with the property and assets authorized to be acquired and conveyed to the board hereunder and now constituting the property and assets of the Buffalo and Fort Erie Public Bridge Company.

§ 3. Six members of the board, who shall be citizens of the United States and residents of the state of New York, shall be appointed and may be removed by the governor; three members of the board, who shall be residents of the Dominion of Canada, shall be appointed, and may be removed, in such manner and at such time and may hold office for such period as may be determined by the Dominion of Canada. Of the members first appointed by the governor, two shall be designated by him to serve for two years from the date of their appointments; two shall be designated by him to serve for four years from such date and two shall be designated by him to serve for six years from such date. Thereafter each member appointed by the governor shall serve for a term of six years from the date of his appointment.

§ 4. Vacancies in the board caused by the death, disqualification, resignation or removal of a member appointed by the governor shall be filled by appointment by the governor. If a vacancy shall occur by reason of the death, disqualification, resignation or removal of a member who is a resident of the Dominion of Canada, the person appointed to fill such vacancy must be a resident of the Dominion of Canada and such appointment shall be made in the manner and by such authority as the Dominion of Canada may require.

§ 5. The members of the board shall serve without compensation, but the board shall have authority to compensate its members for expenses and disbursements from funds collected by it in the operation of properties acquired by it.

§ 6. The board shall appoint annually a chairman, a vice-chairman or vice-chairmen, a secretary, an assistant secretary, a treasurer, and an assistant treasurer, and may delegate to them such powers and duties as it may deem proper.

§ 7. The board may adopt such by-laws, rules and regulations for the calling and conduct of its meetings and the management of its affairs as it may deem necessary or proper, not inconsistent with the provisions of this act. A majority of the board shall constitute a quorum for the transaction of any business and the concurrence of a majority of the members of the board shall be necessary to the validity of any action by the board.

§ 8. The board may appoint agents and employees with such powers and duties as it may determine, and shall fix their compensation and pay the same out of any funds collected by it in the operation of properties acquired by it.

§ 9. The Buffalo and Fort Erie Public Bridge Authority 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 real and personal property for its corporate purposes.
4. To make contracts and to execute all instruments necessary or convenient.
5. To maintain, reconstruct, repair and replace and operate any properties acquired by it, and pay for the same out of any funds collected by it in the operation of properties acquired by it.
6. To do any other act or thing necessary or proper to carry out, accomplish or effectuate the purposes of this act.

§ 10. The board is authorized to lease and permit to be maintained under such lease, over or along the property acquired by it, telephone, telegraph or electric wires, cables, gas mains, water mains and other mechanical equipment, not inconsistent with the use of the property for vehicular and pedestrian traffic, on such terms and at such consideration as it shall determine, provided, however, that no lease shall be made for a period extending beyond the term of the existence of the board.

§ 11. The board is hereby authorized to acquire title to all of the assets and property of the Buffalo and Fort Erie Public Bridge Company and to pay therefor a sum not exceeding the aggregate of

- (a) The amount necessary to redeem bonds of such company issued and now outstanding;
- (b) The amount necessary, not exceeding fifty thousand dollars and accrued dividends, to retire the capital stock of such company;
- (c) The amount necessary to pay other indebtedness which such company is obligated to pay.

The Buffalo and Fort Erie Public Bridge Company is hereby authorized to transfer and convey to the board all of its assets and property.

§ 12. The board is hereby authorized to accept deeds, bills of sale and other transfers deemed necessary or proper to transfer and convey to the board all of the assets and property of the Buffalo and Fort Erie Public Bridge Company and to hold the same under the provisions of this act, until such time as all of the bonds issued by the board hereunder shall have been paid in full or shall have otherwise been discharged.

§ 13. When all of the bonds issued by the board hereunder shall have been paid in full or shall have otherwise been discharged, the powers, jurisdiction and duties of the board shall cease and the property and assets acquired and held by it within the state of New York shall thereafter be under such jurisdiction, authority or agency as the legislature may designate, and the assets and property acquired or held by it within the Dominion of Canada shall be under such jurisdiction, authority or agency as the Dominion of Canada may designate.

§ 14. 1. The Buffalo and Fort Erie Public Bridge Authority shall have power and is hereby authorized from time to time to issue its negotiable bonds in the aggregate principal amount of not exceeding at any one time four million dollars.

2. The bonds and the indenture, if any, under which they are issued, shall be authorized by resolution of the board and shall bear such date or dates, mature at such time or times, not exceeding fifty years from their respective dates, except that no bonds shall mature before January first, nineteen hundred thirty-seven, bear interest at such rate or rates not exceeding five per centum per annum, payable semi-annually, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places and be subject to

such terms of redemption, not exceeding a premium of one and one-half per centum as such resolution or resolutions may provide. The bonds may be sold at public or private sale for such price or prices as the board shall determine, but at no greater discount than five per centum of the face amount thereof.

3. The bonds may be issued for any corporate purpose of the Buffalo and Fort Erie Public Bridge Authority and/or may be exchanged for outstanding bonds or other indebtedness of the Buffalo and Fort Erie Public Bridge Company on such terms as may be agreed upon by the board and the holders and owners of such bonds and other indebtedness, except that the exchange price thereof shall not be greater in par. value of bonds of the board than the redemption price of the bonds of such company under existing indentures and the face amount of such other indebtedness.

4. Any resolution or resolutions authorizing any bonds or any indenture authorizing the issuance of bonds may contain provisions which shall be a part of the contract with the holders of the bonds or part of the indenture as to (a) pledging the tolls and revenues of the properties to secure the payment of the bonds; (b) the rates of tolls to be charged and the amount to be raised in each year by tolls and the use and disposition of the tolls and other revenue; (c) the setting aside of reserves or sinking funds and the regulation or disposition thereof, provided that no requirement shall be made by which bonds are retired in excess of ten per centum of the total outstanding bonds in any one year; (d) limitations on the right of the board to restrict and regulate the use of the project; (e) limitations on the purpose to which the proceeds of the sale of any issue of bonds then or thereafter to be issued may be applied; (f) limitations on the issuance of additional bonds; (g) procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given; (h) the manner of redemption of such bonds, and (i) insurance to be carried on the property acquired by the board.

5. The bonds, if the board so determines, may be issued under an indenture between the board and a trustee for bondholders in such form and containing such terms and provisions not inconsistent with this act, as the board may determine.

§ 15. Before any such bonds shall be issued or sold or exchanged, and before any such conveyance shall be made or property acquired, all proper and requisite authority for the issuance of such bonds shall be obtained from the Dominion of Canada. The Dominion of Canada may attach such conditions not inconsistent with this act with respect to the transfer of the properties, rights and franchises of the corporation situated within the Dominion of Canada as it may deem necessary.

§ 16. Subject to any contract with the holders of any bonds, the board shall have power at any time or from time to time

to issue new bonds in place of those then outstanding having like or different terms and secured by like or different provisions. Such bonds may be exchanged for outstanding bonds or may be sold and the proceeds applied to the payment of the outstanding bonds.

§ 17. Neither the members of the board nor any person executing such bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

§ 18. The board shall have power, out of any funds available therefor, to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest.

§ 19. The bonds shall be a first lien on the real estate and bridge property of the Buffalo and Fort Erie Public Bridge Authority, including structures and approaches and lands and easements used therewith, except as to first mortgage bonds now outstanding against such real estate and property, and as to debenture bonds now outstanding.

§ 20. In the event that the board shall default in the payment of principal or of interest on any of the 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 board shall fail or refuse to comply with the provisions of this act or shall default in any agreement made with the holders of the bonds, the trustee appointed in the indenture under which such bonds are issued, or if there be no indenture, then a trustee appointed by twenty-five per centum in face amount of bonds then outstanding, may and upon written request of the holders of twenty-five per centum in principal amount of the bonds then outstanding, shall in his or its own name:

(a) By mandamus or other suit, action or proceeding in law or in equity, enforce all rights of the bondholders including the right to require the board to collect tolls and rentals adequate to carry out any agreement as to or pledge of such tolls and rentals and to require the board to carry out any other agreements with the bondholders and to perform its and their duties under this act;

(b) Bring suit upon the bonds;

(c) By action or suit in equity, require the board to act as if it were the trustee of an express trust for the bondholders;

(d) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders;

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

(f) To enforce any remedy by foreclosure or suit and the supreme court is hereby given jurisdiction of any suit, action or proceeding by the trustee on behalf of the bondholders, the venue of which shall be laid in the county of Erie and state of New York.

Any such trustee on default in the payment of principal and interest, whether or not all bonds have been declared due and payable, shall be entitled as of right to the appointment of a receiver who may enter and take possession of the assets and property or any part or parts thereof and operate and maintain the same and collect and receive all tolls, rentals and other revenues thereafter arising therefrom, in the same manner as the board itself might do and shall deposit all such moneys in a separate account and apply the same in such manner as the court shall direct. 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 tolls, rentals and other revenues derived from such assets. 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 the bondholders in the enforcement and protection of their rights.

The foregoing remedies of the bondholders and of the trustee, however, are subject to the limitations that before declaring the principal of all bonds due and payable, the trustee shall first give notice in writing to the board and to the attorney-general of the state of New York, and if, when such notice is given to the attorney-general, the legislature shall be in session, the trustee shall not declare the principal of the bonds due before the legislature adjourns sine die or if the legislature be not then in session, the trustee shall not declare the principal of the bonds due until such an adjournment of the next regular session. If at such session the legislature shall take any action as a result of which past due principal and interest, with interest on past due interest, together with fees, counsel fees and expenses of the trustee and of the receiver, if any, as fixed by the court, shall be paid within sixty days of adjournment, default in the payment thereof shall thereby be remedied.

§ 21. The bonds and other obligations of the Buffalo and Fort Erie Public Bridge Authority shall not be a debt of the state of New York nor of the Dominion of Canada and neither the state of New York nor the Dominion of Canada shall be liable thereon nor shall they be payable out of any funds other than those of the Buffalo and Fort Erie Public Bridge Authority.

§ 22. The bonds are hereby made securities in which all public officers and bodies of this state and all municipalities and municipal subdivisions may properly and legally invest funds in their control or accept as security for deposits and all insurance companies and associations, all savings banks and savings institutions, including savings and loan associations, administrators, guardians, executors, trustees and other fiduciaries of the state may properly and legally invest funds in their control.

§ 23. Bonds and property to be tax exempt. The properties of the Buffalo and Fort Erie Public Bridge Authority shall be exempt from all taxes and assessments by the state or any municipality or municipal subdivision thereof and the bonds shall be exempt from taxation except for transfer, estate and inheritance taxes.

§ 24. The board, subject to the authority vested in the secretary of war of the United States and the authority of the Dominion of Canada, shall have power and be required to fix the rate of tolls for the use of the bridge, approaches, connections and appurtenances; provided, however, that the toll charges for pedestrian and vehicular traffic shall be discretionary and adjusted from time to time, but at a rate consistent with any contract with the holders of its bonds, and shall not be higher than, in the judgment of the board, is necessary to provide for the payment of interest, operating expenses, maintenance and insurance, repairs, replacements and proper working funds and to mature from two and one-half per centum to not more than ten per centum of the total outstanding bonds in any one year, except that no provision shall be made for the redemption of bonds issued by the board before January first, nineteen hundred thirty-seven.

§ 25. Within thirty days after the execution and delivery of the deeds of conveyance authorized by this act, the board shall execute and file with the comptroller of the state of New York and with such authority as the Dominion of Canada may designate, a detailed verified statement of the assets and liabilities of the corporation. The board annually in the month of February or oftener when required shall file with the comptroller of the state of New York and with such authorities of the Dominion of Canada as may be designated by the Dominion of Canada, an itemized detailed verified report of all receipts and disbursements of the corporation subsequent to the execution and delivery of the deeds of conveyance as authorized by this act.

§ 26. All moneys received by the Buffalo and Fort Erie Public Bridge Authority shall be paid to the treasurer thereof or other officer or officers designated by the board for the purpose. The treasurer and each other officer of the board receiving moneys of the Buffalo and Fort Erie Public Bridge Authority shall execute in duplicate an undertaking in such amount or amounts and with such sureties as may be approved by the comptroller of the state of New York, and by such authority as may be designated for the purpose by the Dominion of Canada, conditioned for the safe-keeping and lawful application of all moneys which may come to his hands, and shall file one copy in the office of the state department of audit and control and one copy in such office or department as may be designated by the Dominion of Canada. Such bond may be increased or reduced from time to time in the discretion of the comptroller and of such authority designated by the Dominion of Canada. The state treasurer and his legally authorized representatives and the state comptroller and his legally authorized representatives and such authority as may be designated by the Dominion of Canada are hereby authorized and empowered from time to time to examine the accounts and books of the board, including its receipts, disbursements, contracts, leases, sinking

funds, investments and any other matters relating to its financial standing.

§ 27. The following terms, whenever used, or referred to in this act, shall have the following meaning unless a different meaning clearly appears from the context:

1. The term "Buffalo and Fort Erie Public Bridge Authority" shall mean the corporation created by section one of this act.

2. The term "board" shall mean the members of the Buffalo and Fort Erie Public Bridge Authority.

3. The term "bridge" shall include terminals, approaches, buildings, rights, easements and privileges.

4. The term "bonds" shall mean bonds issued by the Buffalo and Fort Erie Public Bridge Authority pursuant to this act, except where reference is made to the bonds of Buffalo and Fort Erie Public Bridge Company.

5. The term "Buffalo and Fort Erie Public Bridge Company" and the term "Company" as used herein shall mean the Buffalo and Fort Erie Public Bridge Company which is a consolidation of a corporation organized under chapter three hundred and seventy-nine of the laws of nineteen hundred and twenty-two and a corporation authorized under thirteen and fourteen, George V. chapter seventy-four of the Parliament of the Dominion of Canada.

§ 28. 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, it shall be valid and effective and no other section, clause or provision shall on account thereof be deemed invalid or ineffective.

§ 29. Insofar as the provisions of this act are inconsistent with the provisions of any other act, general or special, the provisions of this act shall be controlling.

§ 30. This act shall take effect immediately.