Establishes Gateway Development Commission with certain powers and responsibilities.

As introduced.
AN ACT establishing the Gateway Development Commission, supplementing Title 32 of the Revised Statutes, and amending P.L.1966, c.301.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. (New section) This act shall be known and may be cited as the “Gateway Development Commission Act.”

2. (New section) Gateway Development Commission.

a. The Legislature finds and declares that: the State of New Jersey and the State of New York and their respective citizens share a common interest to preserve the functionality and strengthen the resiliency of long-distance and commuter rail infrastructure between New Jersey and New York, including passenger rail infrastructure owned, controlled, or utilized by the National Railroad Passenger Corporation, also known as “Amtrak”; the two states and their respective citizens share the benefits of the existing interstate passenger rail infrastructure between the two states, including the existing North River Tunnel; interstate passenger rail service and infrastructure is vital to the economies of New Jersey and New York; because of the passage of time and damage caused by natural disasters, both states recognize the existing interstate passenger rail infrastructure, including the existing North River Tunnel, is at risk of system failures that could result in prolonged service disruptions that would severely damage the economies of the two states and many other portions of the economy of the Northeast Corridor; both states recognize the urgent need to undertake projects necessary to create additional passenger rail capacity under the Hudson River, rehabilitate passenger rail infrastructure, maintain current levels of long-distance and commuter rail service between the two states and provide additional reliability, safety, and security; the citizens of both states will share the benefits of expanded capacity and rehabilitated passenger rail infrastructure between the two states; and there has been a long history of cooperation among state and local governmental entities, Amtrak, and various private organizations and individuals in the two states to ensure the preservation of a variety of passenger rail service options.

b. The Legislature therefore determines that the state of New Jersey and the State of New York shall equally divide the financial burdens that constitute the local share of the total costs of the Gateway Program, with 50 percent of the local share to be paid by each state, and further determines that there is a need to endorse and

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
formalize that bi-state cooperative effort to help ensure that the
functionality of long-distance and commuter rail infrastructure
between New Jersey and New York and throughout the Northeast
Corridor is preserved and maintained for the benefit of the
economies of New Jersey and New York and for the well-being of
present and future generations of citizens in both states; and that the
creation of a bi-state commission that shall be a body corporate and
politic established by the State of New Jersey and the State of New
York, acting in the public interest and exercising essential
governmental functions, is an appropriate means to accomplish
these very important goals and is not intended to impair, limit,
diminish, or otherwise affect any right, power, or jurisdiction of the
United States of America or any department, branch, agency, court,
bureau, or other instrumentality thereof with respect to any matter,
or grant or confer any right or power on such bi-state commission,
or any officer or trustee thereof, to regulate commerce between the
states.

c. It is the intention of the Legislature that the commission
constitutes an institution which has been established by the states to
effectuate a public purpose and is therefore eligible to apply for
financial assistance from the United States government, including
the agencies thereof.

3. (New section) Definitions.

Except where different meanings are expressly specified in
subsequent provisions of P.L. , c. (C. ) (pending before the
Legislature as this bill), as used in P.L. , c. (C. ) (pending
before the Legislature as this bill):

“Amtrak” means the National Railroad Passenger Corporation, a
corporation organized under 49 U.S.C. s.24101 et seq. and the laws
of the District of Columbia.

“Board” means the Board of Commissioners of the Commission.

“Commission” means the Gateway Development Commission
which is established pursuant to P.L. , c. (C. ) (pending
before the Legislature as this bill).

"Committee" or "committees" means any standing committee
established by the board tasked with, including, but not limited to,
the audit responsibility, governance responsibility, and finance
responsibility required to be established pursuant to P.L. , c.
(C. ) (pending before the Legislature as this bill).

“Facilitate” or “facilitation” means the planning, designing,
construction, reconstruction, replacement, approval of works,
rehabilitation, repair, alteration, improvement, extension, and
management of matters directly associated with the Gateway
Program.

“Full Funding” means the sum of commitments to fund, from
sources deemed by the Commission to be creditworthy, plus
Commission cash-on-hand, plus such other sources of funding
deemed certain to be available as and when required, found by the Commission to be sufficient to Facilitate the Gateway Program.

“Gateway Program” means a series of passenger rail transportation projects between Penn Station, Newark, New Jersey and Penn Station, New York, New York that consists of the following component projects: the Hudson Tunnel project; the Portal North Bridge project; the Portal South Bridge project; the Hudson Yards right-of-way preservation project; the Sawtooth Bridge replacement project; the Moynihan Station construction and Penn Station rehabilitation project; the Secaucus Loop project; the Secaucus Junction renovation and expansion project; and the Penn Station South project.

“Hudson Tunnel project” means a project to construct a new two-track Hudson River rail tunnel from New Jersey to Manhattan that will directly serve Penn Station New York and to rehabilitate the existing North River Tunnel.

“Hudson Yards right-of-way preservation project” means a project to preserve the right-of-way under the Hudson Yards in Manhattan through the construction of two underground tubes to connect the new two-track Hudson River rail tunnel with existing rail infrastructure at Penn Station New York and new rail infrastructure associated with the Penn Station South project.

“Meeting” means any gathering, whether corporeal or by means of communication equipment, which is attended by, or open to, the Board, held with the intent, on the part of the commissioners present, to act as a unit upon the specific public business of the Commission. “Meeting” does not mean a gathering (1) attended by less than a quorum of commissioners; (2) in which the Board is engaged in ordinary course supervision of Commission staff; (3) in which consideration of Commission business matters are informally discussed without the intent or effect of effectuating any action of the Commission; or (4) a convention or similar gathering.

“Moynihan Station construction and Penn Station rehabilitation project” means a project to convert the James A. Farley Post Office building in Manhattan to a train station and to connect the newly converted train station to New York Penn Station, in conjunction with renovations to the rail infrastructure at New York Penn Station.

“News media” means persons representing major wire services, television news services, radio news services, and newspapers, whether located in the state of New York or New Jersey or any other state.

“Penn Station South project” means a project to construct a new train station south of the existing New York Penn Station that connects to New York Penn Station and accommodates additional rail capacity into Manhattan from New Jersey.

“Portal North Bridge project” means a project to replace the existing Portal Bridge over the Hackensack River between Secaucus
and Kearny, New Jersey with a new, high-level, two-track fixed rail bridge.

“Portal South Bridge project” means a project to construct a new, high-level, two-track fixed rail bridge over the Hackensack River between Secaucus and Kearny, New Jersey at a location south of the Portal North Bridge.

“Public business” means matters which relate in any way, directly or indirectly, to the performance of the functions of the Commission or the conduct of its business.

“Sawtooth Bridge replacement project” means a project to replace the two-track rail bridges carrying the Northeast Corridor line at a location northeast of Kearny Junction where the Northeast Corridor line intersects with the Newark Turnpike and Belleville Turnpike with new four-track rail bridges and to replace the existing Sawtooth Bridge with a new four-track rail bridge.

“Secaucus Loop project” means a project to construct new rail infrastructure near Secaucus Junction to connect the New Jersey Transit Corporation’s Main-Bergen County Line and Passaic Valley Line and the Metro-North Commuter Railroad’s Port Jervis Line with the Northeast Corridor Line.

“Secaucus Junction renovation and expansion project” means a project to construct two additional tracks along the land-based portions of the Northeast Corridor Line from Newark, New Jersey to Manhattan and to expand the tracks and platforms at Secaucus Junction to accommodate additional rail traffic that is anticipated as a result of other component projects of the Gateway Program.

4. (New section) Creation of the commission; purposes.

a. There is hereby created the Gateway Development Commission, a body corporate and politic established by the State of New Jersey and the State of New York, which shall be deemed to be acting in the public interest and exercising essential government functions in taking action hereunder and which shall be a public authority and a government sponsored authority. The purposes of the Commission shall include the following:

(1) Facilitate the Gateway Program;

(2) Serve the mutual interests of the State of New Jersey, the State of New York, and Amtrak by coordinating governmental entities, Amtrak, and private entities providing assistance to the Gateway Program or otherwise regulating the Gateway Program, with a view to achieving Full Funding, and encourage and enable such parties to participate in the Facilitation of the Gateway Program;

(3) Act as a lead agency for the Facilitation of the Gateway Program and to act as the recipient of all Gateway Program funds and as the project lead for all component projects of the Gateway Program, unless one of the other partner agencies or entities is designated as the project sponsor. The Commission is hereby
intended to qualify for, authorized, and empowered to apply for and
accept, financial assistance, loans, grants, or any other funding for
such purposes under federal, state, or local laws, and to make
application directly to the appropriate officials or agencies for the
application for and receipt of federal, state, or local assistance,
loans, grants, or any other funding in aid of any of the purposes of
P.L. , c. (C. ) (pending before the Legislature as this bill);
(4) Pursue efforts to assist federal or state agencies and other
entities to fulfill their goals set forth in federal law or the laws of
the State of New York or the State of New Jersey to further
passenger rail transportation between the states, including 49 U.S.C.
s.24901 et seq.; and
(5) Take any and all actions authorized by P.L. , c. (C. )
(pending before the Legislature as this bill) which are or may be
necessary or appropriate to constitute and maintain itself as an
applicant eligible to qualify to apply for and be awarded financial
assistance, loans, grants, or other funding as may be available for
the Gateway Program, including that awarded by federal, state, and
local governments and the agencies thereof.

b. Officers. The officers of the Commission shall be a
chairperson, a vice chairperson, a chief executive officer, a general
counsel, a chief financial officer, a chief ethics and compliance
officer, an inspector general, a treasurer, a comptroller, and a
secretary. Each officer shall be selected by the board of
commissioners.

5. (New section) Board of Commissioners.
 a. The Commission shall consist of nine commissioners, three
resident voters from the State of New York, three resident voters
from the State of New Jersey, and three individuals appointed
directly by the Amtrak board of directors. The commissioners
appointed by Amtrak shall serve to represent Amtrak’s interest, as
owner-operator of the Northeast Corridor, in the work to be
undertaken by the Commission. The New York commissioners
shall be chosen by the state of New York and the New Jersey
commissioners shall be chosen by the state of New Jersey in the
manner and for the terms fixed and determined from time to time by
the legislature of each state respectively. Any commissioner
appointed to the board shall have experience in one or more of the
following areas: transportation, public administration, business
management, finance, accounting, law, engineering, land use, urban
and regional planning, management of large capital projects, labor
relations, or have experience in some other area of activity central
to the mission of the Commission.
 b. Commissioners shall serve without compensation, but the
Commission may, within the limits of funds appropriated or
otherwise made available to it, reimburse commissioners for actual
expenses necessarily incurred in the discharge of their official
duties.

c. The commissioners from the State of New Jersey and the
commissioners from the State of New York shall be indemnified by
the State of New Jersey and the State of New York, respectively, to
the same extent as such state indemnifies a public officer for any
claim or judgment arising out of such public officer’s official
duties.

d. Each commissioner may be removed or suspended from
office as provided by the law of the state from which that
commissioner is appointed.

e. No commissioner, including the chairperson, shall serve as
the commission’s chief executive officer, general counsel, chief
financial officer, chief ethics and compliance officer, inspector
general, comptroller, or secretary, or hold any other equivalent
position while serving as a commissioner.

f. Oath of Office. The commissioners shall promulgate a
commissioner’s oath of office in consultation with the chief ethics
and compliance officer. Each commissioner and officer shall,
before entering upon the duties of his office, take and subscribe the
constitutional oath of office. The oaths of office shall be filed in
the office of the commission. No person shall be eligible for
appointment or shall hold office of commissioner or be appointed
to, or hold, any office or position under the Commission, who holds
any official relation to any person or corporation related to the
mission of the Commission, or who owns stocks or bonds of any
such corporation.

g. Commissioner Statement. At the time that a commissioner
takes and subscribes the commissioner’s oath of office, the
commissioner shall execute a statement declaring that the
commissioner understands the commissioner’s independence and
fiduciary obligation to perform duties and responsibilities to the
best of the commissioner’s abilities, in good faith and with proper
diligence and care which an ordinarily prudent person in like
position would use under similar circumstances and may take into
consideration the views and policies of any elected officials or
bodies and ultimately apply independent judgment in the best
interest of the commission, its mission, and the public, consistent
with this enabling statute, mission, and by-laws of the commission
and the applicable laws of both states; and that the fiduciary duty to
the commission is derived from and governed by its mission.

h. Board Training. Individuals appointed to the board of
commissioners shall participate in training approved by the chief
ethics and compliance officer in consultation with the inspector
general of the Commission regarding their legal, fiduciary, financial
and ethical responsibilities as commissioners of the Commission
within six months of appointment to the Commission. The
commissioners shall participate in continuing training as may be
required to remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of commissions or public authorities and adhere to the highest standards of responsible governance.

i. Recusals.

(1) A commissioner shall not vote on or participate in any board or committee discussions or decisions with respect to an item if the commissioner, a member of the commissioner's immediate family, or a business in which the commissioner has an interest, has a direct or indirect financial involvement that may reasonably be expected to impair the commissioner's objectivity or independent judgement or that may reasonably create the appearance of impropriety. A commissioner shall report such a need for recusal to the general counsel when it arises. The public shall be informed of any recusals prior to any board action and the minutes shall clearly reflect that recusal.

(2) For the purposes of this subsection:

“Immediate family" means a spouse, parent, child, or sibling; and

“Interest” means: if the business organization is a partnership, the board member or board member’s immediate family is a partner or owner of 10 percent or more of the assets of the partnership, or if the business organization is a corporation, the board member or the board member’s immediate family owns or controls 10 percent or more of the stock of the corporation, or serves as a director or officer of the corporation.

j. Financial Disclosure.

(1) Notwithstanding any other provision of law to the contrary, the commissioners, officers, and employees of the commission shall file annual financial disclosure statements as provided in this section.

(2) (a) The commissioners appointed by the State of New York shall file annual financial disclosure statements pursuant to section 73-a of the public officers law.

(b) The commissioners appointed by the State of New Jersey shall file annual financial disclosure statements as required by New Jersey state law or executive order.

(c) In addition to the financial disclosures required of the commissioners, financial disclosures of employees shall, at a minimum, be required of the chief executive officer, the general counsel, the comptroller, the treasurer, the inspector general, employees who hold policy-making positions as determined by the general counsel of the Commission, and employees whose base salary, either in the current or previous year, exceeds $150,000, which shall be adjusted for inflation annually in accordance with the consumer price index for all urban wage earners and clerical workers (CPI-W) as calculated by the federal government. The
financial disclosures shall be updated not less than annually and shall be made available on the Commission’s website.

6. (New section) Organization of the Commission; meetings.
   a. The chairperson of the Commission shall serve from among the commissioners appointed by the state of New Jersey and the commissioners appointed by the state of New York. The initial chairperson shall be one of the commissioners appointed by the state of New York and shall serve a one-year term. Following the initial one-year term, the chairperson shall be one of the commissioners appointed by the state of New Jersey. Thereafter, the chairpersonship shall alternate between commissioners from each state with each chairperson serving for a one-year term. The commissioner who shall serve as chairperson from each state shall be decided in accordance with the laws of each respective state. One of the commissioners appointed by Amtrak shall serve as vice chairperson, at the discretion of the Amtrak board of directors.
   b. The Commission shall meet regularly as it may determine. Meetings shall be held at such times and places as the chairperson of the Commission deems appropriate. To the maximum extent practicable, meetings shall be held on an alternating basis in New Jersey and New York.
   c. The powers of the Commission may be exercised by the commissioners at a meeting duly noticed and held where a majority of commissioners are present. Each party to the Commission may cast one collective vote on any motion, resolution, or other action of the board. The commissioners appointed by the State of New York shall cast one collective vote in a manner determined by the laws of the State of New York. The commissioners appointed by the State of New Jersey shall cast one collective vote in a manner determined by the laws of the State of New Jersey. The commissioners appointed by the board of directors of Amtrak shall cast one collective vote in a manner determined by the Amtrak board of directors. Action may be taken and motions and resolutions adopted by the Commission at any meeting thereof only through the unanimous affirmative vote of each party to the Commission. Each state reserves the right to provide by law for the exercise of a veto power by the governor thereof over any action of any commissioner appointed therefrom. The commissioners shall adopt bylaws providing for attendance protocols, voting procedures, and other matters related to the conduct of business by the Commission.
   d. Board Committees.
     (1) The board of commissioners shall establish a committee structure that shall include, but need not be limited to, the following responsibilities:
        (a) a governance responsibility to be assigned to a committee comprised of not fewer than three commissioners who shall possess the necessary skills to undertake the governance duties and
functions. Such committee shall be comprised of not fewer than
one commissioner appointed by each appointing party. It shall be
the responsibility of the members of this committee to: keep the
board informed of current best governance practices; review
corporate governance trends; update the commission’s corporate
governance principles; examine ethical and conflict of interest
issues; perform board self-evaluations; investigate term limits,
reappointments, and board responsibilities; develop by-laws which
include rules and procedures for the conduct of board business; and
advise the Commission on the skills and experiences required of
potential commissioners;

(b) an audit responsibility to be assigned to a committee
comprised of not fewer than three commissioners and who shall
possess the necessary skills to undertake the audit duties and
functions. Such committee shall be comprised of not fewer than one
commissioner appointed by each appointing party. It shall be the
responsibility of the members of this committee to: recommend to
the board the hiring of an independent firm of certified public
accountants to audit the financial statements of the Commission;
establish the compensation to be paid to the accounting firm; and
provide direct oversight of the annual independent financial audit
performed by the accounting firm hired for auditing purposes.
Members of this committee shall be familiar with corporate
financial and accounting practices and shall be financially literate
about applicable financial laws, rules, regulations, and standard
industry practices; and

(c) a finance responsibility to be assigned to a committee
comprised of not fewer than three commissioners and who shall
possess the necessary skills to undertake the finance duties and
functions. Such committee shall be comprised of not fewer than
one commissioner appointed by each appointing party. It shall be
the responsibility of the members of this committee to oversee and
approve the issuance of debt that the Commission or its subsidiaries
issue.

(2) Every committee established by the board of commissioners
shall promulgate a written charter to be approved by the board.
Each charter promulgated in accordance with this paragraph shall
be made available to the public and posted on the Commission’s
website.

e. The Commission may request the assistance and services of
such employees and agents as it may require and as may be made
available to it for the purpose of carrying out its duties under
P.L., c. (pending before the Legislature as this bill),
which agents may include private consultants and persons employed
by or acting as a consultant for the federal government, the State of
New Jersey, any local government thereof, the State of New York,
any local government thereof, any agency, instrumentality,
department, commission, or authority of any one or more of the
foregoing, any bi-state agency, or of Amtrak, and each such
government and enumerated party is authorized to provide any such
assistance and services to the Commission.

f. The Commission may, within the limits of funds
appropriated or otherwise made available to it for those purposes,
employ such professional, technical, and clerical staff and
consultants and incur such expenses as it may deem necessary or
appropriate in order to perform its duties.

g. The Commission shall adopt and promulgate appropriate
bylaws, rules, and regulations concerning the right of the public to
be present at Meetings of the Commission and to obtain records of
the Commission’s activities or Public business. Any rules or
regulations adopted hereunder shall become a part of the minutes of
the Commission and be posted on its website.

h. The Commission shall:

(1) adopt a mission statement that the Commission’s mission is
to serve the mutual interests of the state of New Jersey, the state of
New York, and Amtrak by facilitating the Gateway Program;

(2) adopt a code of conduct applicable to commissioners,
employees, and vendors and other contractors with the commission
based upon the recommendations of the chief ethics and compliance
officer that shall, at minimum, include the applicable standards
established by law in each state;

(3) establish a whistleblower access and assistance program
protecting employees from retaliation for disclosing information
concerning acts of wrongdoing, misconduct, malfeasance, or other
inappropriate conduct based upon the recommendations of the chief
ethics and compliance officer;

(4) establish a policy requiring all commissioners, officers, and
employees with decision-making authority to maintain records
regarding contact with lobbyists. As used in this subsection:
“contact” means any conversation, in person or by telephonic or
other electronic means, or correspondence between any lobbyist
engaged in the act of lobbying and any person within the
Commission who can make or influence a decision on the subject of
the lobbying on the behalf of the Commission, and shall include, at
a minimum, all members of the board of commissioners and all
officers of the Commission. “Lobbyist” shall have the same
meaning as defined in the laws or, rules or regulations of either
state, and “lobbying” shall mean and include any attempt to
influence: the adoption or rejection of any rule or regulation having
the force and effect of law by the Commission, the outcome of any
proceeding by the Commission to establish, levy, or collect fees,
tolls, charges, or fares, and the authorization, approval or award of
any agreements, contracts, or purchase orders, including any
settlement of Commission claims, or any extension, amendment, or
modification of any existing agreement, contract, or order; and
(5) have an efficiency study of the Commission and its operations conducted by an independent entity upon the request of the governors of New York and New Jersey, and if no request is made, no longer than every three years.

i. Whistleblower program.

(1) The chief ethics and compliance officer shall recommend to the board of commissioners a whistleblower access and assistance program to be administered by the inspector general which shall include, but not be limited to:

(a) establishing an email address and toll-free telephone, facsimile, and text messaging lines available to employees;
(b) offering advice regarding employee rights under applicable state and federal laws and advice and options available to all persons; and
(c) offering an opportunity for employees to identify concerns regarding any issue at the Commission.

Any communication between an employee and the inspector general pursuant to this subsection shall be held strictly confidential by the inspector general, unless the employee specifically waives in writing the right to confidentiality, except that such confidentiality shall not exempt the inspector general from disclosing such information, where appropriate, to the board of commissioners and/or any law enforcement authority.

(2) The Commission shall not fire, discharge, demote, suspend, threaten, harass, or discriminate against an employee because of the employee's role as a whistleblower, insofar as the actions taken by the employee are legal.

(3) As used in this subsection:

"Employees" means those persons employed at the Commission, including but not limited to: full-time and part-time employees, those employees on probation, and temporary employees.

"Whistleblower" means any employee of the Commission who discloses information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or board member of the Commission, including, but not limited to, such acts concerning the Commission's investments, travel, acquisition of real or personal property, the disposition of real or personal property, or the procurement of goods and services.

j. Inspector General.

(1) The inspector general shall be responsible for receiving and investigating, where appropriate, all complaints regarding fraud, waste, and abuse by commissioners, officers, and employees of the Commission or third-parties doing business with the Commission.

The inspector general shall also be responsible for conducting investigations upon the inspector general's own initiative, as the inspector general shall deem appropriate.

(2) The inspector general shall inform the board of commissioners and the chief executive officer of allegations
received by the inspector general and the progress of investigations
related thereto, unless special circumstances require confidentiality.

(3) The inspector general shall determine with respect to
allegations received by the inspector general whether disciplinary
action or civil prosecution by the Commission is appropriate, and
whether the matter should be referred to an appropriate
governmental agency for further action.

(4) The inspector general shall prepare and make available to the
public written reports of completed investigations, as appropriate
and to the extent permitted by law, subject to redactions to protect a
need for confidentiality. The release of all or portions of reports
may be deferred to protect the confidentiality of ongoing
investigations.

(5) The inspector general shall have the power to:

- administer oaths or affirmations and examine witnesses under
  oath;
- require the production of any books and papers deemed relevant
  or material to any investigation, examination, or review;
  notwithstanding any law to the contrary, examine and copy or
  remove documents or records of any kind prepared, maintained, or
  held by the Commission and its subsidiaries;
  interview any officer or employee of the Commission or its
  subsidiaries on any matter related to the performance of such officer
  or employee’s official duties. To the extent that the terms and
  conditions of employment of any employee are established by
  collective negotiations, any interview conducted pursuant to this
  paragraph must be in accordance with any applicable provisions of
  the current, or most recent, if expired, collective negotiations
  agreement covering the terms and conditions of employment of the
  employee;
  monitor the implementation by the Commission of any
  recommendations made by the inspector general; and
  perform any other functions that are necessary or appropriate to
  fulfill the duties and responsibilities of office.

k. Open Meetings.

(1) All meetings of the Commission shall be open to the public
and members of the news media, individually and collectively, for
the purpose of observing the full details of all phases of the
deliberation, policy-making, and decision-making of the board,
except for an executive session initiated upon a majority vote taken
in an open meeting pursuant to a motion. Such motion shall
identify the general nature of the subjects to be considered in the
closed, executive session and, if it is not to take place immediately,
state, as closely as possible the time and circumstances for such
session and when the matters discussed or acted upon may be
disclosed. The board of commissioners may exclude the public
only from that portion of a meeting at which the board of
commissioners discusses any:
matter in which the release of information would impair a right
to receive funds from the government of the United States;
material the disclosure of which would constitute an unwarranted
invasion of individual or personal privacy;
collective bargaining agreement, or the terms and conditions
which are proposed for inclusion in any collective bargaining
agreement, including the negotiation of the terms and conditions
thereof with employees or representatives of employees of the
Commission;
matter involving the purchase, lease, or acquisition of real
property with Commission funds, the proposed acquisition of
securities, the sale or exchange of securities held by the
Commission, or the investment of Commission funds, if public
discussion of the matter would adversely affect the public interest;
matter which would imperil the public safety if disclosed;
pending or anticipated litigation or contract negotiation in which
the Commission is, or may become, a party, or matters falling
within the attorney-client privilege, to the extent that confidentiality
is required for the attorney to exercise the attorney's ethical duties
as a lawyer;
contract negotiations disclosure of which would imperil the
Commission's position or an outcome in the best interest of the
Commission, its mission, and the public;
matter involving the employment, appointment, termination of
employment, terms and conditions of employment, evaluation of the
performance of, promotion or disciplining of any specific
prospective officer or employee or current officer or employee
employed or appointed by the Commission, unless all the individual
employees or appointees whose rights could be adversely affected
request in writing that the matter or matters be discussed at a public
meeting; or
deliberation of the Commission occurring after a public hearing
that may result in the imposition of a specific civil penalty upon the
responding party or the suspension or loss of a license or permit
belonging to the responding party as a result of an act or omission
for which the responding party bears responsibility.

(2) The Commission shall make meeting agendas available to
the public at least 72 hours before each meeting of the board and
each meeting of each committee. In addition, the Commission shall
send via electronic mail the agenda and public documents
pertaining to a board or committee meeting to the public
information office of each state's legislature at least 72 hours before
the meeting. Public notice of the time and place of a meeting shall
be provided to appropriate media outlets, shall be conspicuously
posted in one or more designated areas, and shall be conspicuously
posted via the Commission's official website at least five business
days before the meeting.
(3) The Commission shall make available to the public documents in the following manner: the agenda and public documents pertaining to a board or committee meeting shall be available for public inspection at least 72 hours before each meeting or as soon as practicable at an office of the Commission; and the agenda and public documents pertaining to a board or committee meeting shall be posted on the Commission's website.

(4) At each public meeting of the board and at each public meeting of each committee, the public shall be allotted at least 30 minutes to speak on any topic on the agenda. The board or committee shall expand the comment time when necessary to provide a reasonable opportunity for the public to comment. The public speaking period shall take place prior to any board or committee action.

(5) The Commission shall keep reasonably comprehensible minutes of all its meetings showing the time and place, the members present, the subjects considered, the actions taken, and the vote of each member. The minutes shall be available to the public within two weeks from the date of the meeting to the extent that public disclosure shall not be inconsistent with paragraph (1) of this subsection. The minutes shall indicate for each item on the agenda the vote or recusal of each board member in attendance at an open meeting, or an executive session of the board or a committee of the board. Each item on the agenda shall be voted on separately.

1. Barrier-free access. The Commission shall make or cause to be made all reasonable efforts to ensure that meetings are held in facilities that permit barrier-free physical access to people with disabilities. If the board determines to use video conferencing or similar technology to conduct its meeting, it shall provide an opportunity for the public to attend, listen, and observe such a meeting.

m. Meeting Notice.
(1) The board shall, within six months of the effective date of this act, adopt appropriate rules and regulations concerning proper notice to the public and the news media of its meetings and the right of the public and the news media to be present at meetings of the authority. The board may incorporate in its rules and regulations conditions under which it may exclude the public from a meeting or a portion thereof in accordance with paragraph (1) of subsection k. of this section.

(2) Any rules or regulations adopted hereunder shall become a part of the minutes of the Gateway Development Commission and shall be subject to the approval of the Governor of New Jersey and the Governor of New York.

n. Freedom of Information.
Notwithstanding any law to the contrary, the Commission shall be deemed an "agency" and treated as such under the laws of New York, for all purposes under articles 6 and 6-A of the Public
Officers Law, and shall be deemed a "public agency" and treated as such under New Jersey, P.L.1963, c.73 (C.47:1A-1 et seq.), pertaining to the disclosure of government records.

1. Legislative hearings.

(1) The Commission, at the request of the Assembly or Senate of the New York state legislature or the General Assembly or Senate of the New Jersey state legislature, shall be required to appear before a committee of the requesting state legislative house, upon request by the presiding officer of that state legislative house, to present testimony on any topic or subject requested by the committee or to respond to questions by members of the committee. The Assembly of the New York state legislature, the Senate of the New York state legislature, the General Assembly of the New Jersey state legislature, and the Senate of the New Jersey state legislature shall each be entitled to two such requests per calendar year.

(2) Unless otherwise agreed to by the presiding officer of the state legislative house requesting the appearance of the Commission, the Commission shall, at a minimum, be represented by the chair or vice-chair of the board, chief executive officer, the chief financial officer, and any staff deemed necessary by the chair or vice-chair of the board, chief executive officer, or the chief financial officer to present testimony or respond to questions at any appearance required pursuant to this subsection. The presiding officer may request the appearance of any officer or employee of the Commission. For purposes of this section, as applicable to New York state "presiding officer" shall mean the Speaker of the Assembly of the New York state legislature or Temporary President of the Senate of the New York state legislature. For purposes of this section, as applicable to the State of New Jersey "presiding officer" shall mean the President of the Senate or the Speaker of the General Assembly of the State of New Jersey.

7. (New section) Duties of the Commission.

The duties of the Commission shall be to use its efforts to accomplish, at such times as it is appropriate to do so, the following actions, provided that the Commission shall not be in dereliction of its duties so long as it acts in good faith to accomplish such actions:

a. Make appropriate application for, and act as a coordinating, distributing, or recipient agency for, federal, state, or private funding and authorizations necessary or appropriate to Facilitate the Gateway Program;

b. Serve as the lead agency responsible for cooperating with federal, state, local, and bi-state agencies, authorities, or departments, Amtrak, and private parties to Facilitate the Gateway Program, including entering into agreements specifying a party’s rights and obligations with respect to the Gateway Program, to create a Gateway Program capable of achieving long-term stability...
and Full Funding, without obligating the full faith and credit of the
federal government, either state, or any local government thereof, or
any other party, except as explicitly authorized by any party
empowered by law to do so;

c. Adopt bylaws to govern the conduct of its affairs, adopt
rules and regulations, and make appropriate orders to carry out and
discharge its powers, duties, and functions;

d. Expend such funds, made available to the Commission, as
are required to effectuate the purposes set forth in this section and,
until expenditure is required, to hold and prudently invest funds;

e. Recommend appropriate federal, state, and local government
legislation and agency administrative action pertaining to the
Gateway Program;

f. Within 18 months of the date it organizes and not less than
annually thereafter, prepare a report with details on the progress on
its activities and information on the financial and construction plan
for the following two fiscal years, and submit it, together with any
recommendations for state or local government legislation or
agency administrative action to the Governor of the State of New
Jersey, the President of the Senate of the State of New Jersey, the
Speaker of the General Assembly of the State of New Jersey, the
Governor of the State of New York, the Temporary President of the
Senate of the State of New York, and the Speaker of the Assembly
of the State of New York. When appropriate, the recommendations
provided by the Commission shall include recommendations for
additional powers to be granted to the Commission that may be
necessary for the Commission to Facilitate the Gateway Program.
The financial and construction plan presented by the Commission
shall be considered approved unless disapproved by either or both
legislatures within 90 days of receipt of the report; and

g. Take such other action as may be necessary or appropriate to
further the purposes of P.L. , c. (C. ) (pending before the
Legislature as this bill).

8. (New section) Powers of the Commission.
The Commission shall have the power to undertake the
following:

a. Facilitate the Gateway Program, including, but not limited
to, through contracts and agreements and other documents and
instruments which the commission is otherwise authorized to make,
enter into, execute, and deliver; provided, however, that the
facilitation of the project within New York state shall be subject to
article 8 of the New York state labor law, as well as be subject to
sections 200, 240, 241, and 242 of the New York state labor law
and enforcement of prevailing wage requirements pursuant to
applicable law; provided, however, that for the purposes of article
15-A of the New York state executive law only, the Commission
shall be deemed a state agency as that term is used in such article
and its contracts and agreements and other documents and instruments which the commission is otherwise authorized to make, enter into, execute, and deliver for the Gateway Program shall be deemed state contracts within the meaning set forth in such article; provided, however, that the facilitation of the project within the state of New Jersey shall be subject to chapter 15 of Title 34 of the Revised Statutes and that each worker employed to perform construction work in the state of New Jersey pursuant to the Gateway Program shall be paid not less than the prevailing wage rate for the worker’s craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.); provided, however, that construction contracts entered into by the Commission where work pursuant to the contract is conducted in the state of New Jersey shall be subject to the requirements of section 24 of P.L.1984, c.73 (C.27:1B-24); and provided, however, the Commission shall not have the authority to operate or directly engage in transportation services such that the Commission would be subject to the jurisdiction of the federal surface transportation board;

b. Sue and be sued in its own name in federal and state courts in Mercer County, New Jersey and New York County, New York, it being understood that the commissioners shall have no obligation or liability for the acts or omissions of the Commission;

c. Accept, receive, disburse, encumber, and expend funds from whatever source derived, including, without limitation, federal assistance, grants, and loans; state and local government assistance, grants, and loans; and single state or bi-state agency assistance, grants, and loans; private sources, grants, and loans; and revenues received from the disposition of property; and Amtrak grants and loans, in each case as may be necessary to accomplish any lawful purpose which the commissioners determine will Facilitate the Gateway Program and achieve long-term stability and Full Funding;

d. Acquire, including, without limitation, by gift, purchase, or exchange, or by condemnation as may be provided by the legislature of the state in which the condemnation shall take place, subdivide, lease, license, take, and hold property of every description and, solely in furtherance of the purposes of the Commission, to manage such property and develop any undeveloped property owned, leased, or controlled by it in a manner necessary or appropriate to Facilitate the Gateway Program;

e. Make, procure, enter into, execute, and deliver contracts and agreements and other documents and instruments as may be necessary or appropriate to carry out any power or duty of the Commission under P.L. , c. (C. ) (pending before the Legislature as this bill) and to otherwise accomplish any lawful purpose which the commissioners determine will Facilitate the Gateway Program, including, without limitation, with the federal
government, the State of New Jersey, any local government thereof, the State of New York, any local government thereof, any agency, instrumentality, department, commission, or authority of any one or more of the foregoing, any bi-state agency, Amtrak, any individual or private firm, entity, or corporation, or with any one or more of them;

f. Make applications for and accept funding, permits, authorizations, and approvals as may be necessary or appropriate to accomplish any lawful purpose which the commissioners determine will Facilitate the Gateway Program, including, without limitation, with the federal government, the State of New Jersey, any local government thereof, the State of New York, any local government thereof, or any agency, instrumentality, department, commission, or authority of any one or more of the foregoing, any bi-state agency, Amtrak, any individual or private firm, entity, or corporation, or with any one or more of them;

g. Enter into agreements with a private entity or entities to Facilitate the Gateway Program;

h. Adopt its own public procurement rules and guidelines that the Commission deems necessary or appropriate to Facilitate the Gateway Program through any combination of means and methods otherwise available to the Commission under P.L. , c. (C. ) (pending before the Legislature as this bill), regardless of whether such combination is generally available to the State of New Jersey, any local government thereof, the State of New York, any local government thereof, or any agency, instrumentality, department, commission, or authority of any one or more of the foregoing, or any bi-state agency, and engage and contract with third parties in accordance with such procurement rules and guidelines;

i. Coordinate with entities from each state or both states to issue or guarantee bonds, notes, or other evidence of indebtedness, enter into loan agreements and otherwise borrow funds, or incur indebtedness or other future payment obligations for any corporate purpose, including to effectuate Full Funding, and to assign, pledge, mortgage, secure, encumber, and use its funds, assets, property, and revenues for repayment thereof, to be payable out of the funds, assets, properties, and revenues of the Commission without recourse to taxation, provided that the borrowing activity has previously been included as part of the report required pursuant to subsection f. of section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill) and was not disapproved by either or both legislatures or otherwise precluded by conditions placed upon funds provided by another agency or entity, and further provided that the Commission shall have no power to pledge the full faith and credit of the federal government, the State of New Jersey, any local government thereof, the State of New York, any local government thereof, or of Amtrak or the Port Authority of New York and New Jersey in connection with the Gateway Program, or to impose any
obligation for payment of the bonds upon the federal government, 
the State of New Jersey, any local government thereof, the State of 
New York, any local government thereof, or of Amtrak or the Port 
Authority of New York and New Jersey, in each case except as set 
forth in a binding agreement, or to otherwise commit any party to 
incure any liability in excess of its contractual obligations in 
connection with the Gateway Program, and provided further that 
neither the commissioners nor any person executing any bonds 
issued or guaranteed by the Commission shall be liable personally 
on such bonds or be subject to any personal liability or 
accountability by reason of the issuance thereof;

j. Acquire and hold securities for investment purposes or in 
connection with the Facilitation of the Gateway Program;

k. Appoint such officers and employees as the Commission 
may require for the performance of its duties and fix and determine 
their qualifications, duties, and compensation, subject to the 
provisions of the civil service law, the rules of the civil service 
commission of the city, the New York state collective bargaining 
law and applicable collective bargaining agreements with regard to 
those officers, and employees who are residents of and work in New 
York state including engineers, attorneys, consultants, financial 
advisors and such other persons or entities as the business of the 
Commission may require and subject to the civil service law and 
New Jersey collective bargaining law and applicable collective 
bargaining agreements with regard to those officers and employees 
who are residents of and work in the state of New Jersey including 
engineers, attorneys, consultants, financial advisors and such other 
persons or entities as the business of the Commission may require. 
The Commission shall participate in the New York city employees’ 
retirement system;

l. Obtain insurance as the Commission may deem advisable 
and to create a captive insurer to self-insure risk as deemed 
appropriate by the Commission;

m. Cooperate with the federal government, the State of New 
Jersey, any local government thereof, the State of New York, any 
local government thereof, any agency, instrumentality, department, 
commission, or authority of any one or more of the foregoing, any 
bi-state agency, Amtrak, any individual or private firm, entity, or 
corporation, or with any one or more of them, in connection with 
the Gateway Program, and to enter into an agreement or 
agreements, notwithstanding any other provision of law of the 
states, general, special, charter, or local, with the federal 
government, the State of New Jersey, any local government thereof, 
the State of New York, any local government thereof, any agency, 
instrumentality, department, commission, or authority of any one or 
more of the foregoing, any bi-state agency, Amtrak, any individual 
or private firm, entity, or corporation, or with any one or more of 
the same for or relating to the Gateway Program.
n. Indemnify individuals and entities to the extent required to facilitate the Gateway Program;

o. Establish or acquire subsidiaries as required to facilitate the Gateway Program;

p. Utilize the existing labor force in the states and foster labor harmony in allowing for adoption of efficient labor work rules and practices during construction of the Gateway Program;

q. Exercise all other powers as may be necessary or appropriate in furtherance of, and consistent with, the purposes of P.L. , c.

c. (C. ) (pending before the Legislature as this bill), provided that this subsection shall not be construed to delegate any sovereign power of either state unless that power has been expressly delegated to the Commission pursuant to the provisions of P.L. , c.

(C. ) (pending before the Legislature as this bill).

9. (New section) Commission annual financial reporting.

The Commission shall publish a comprehensive annual financial report, submitted annually to the governors and state legislatures of New York and New Jersey and made available on the Commission's website within 120 days after the end of its fiscal year. The annual report shall include the Commission's financial statements, statistical and other regional data, and a narrative of the Commission's activities during the year of the report. The annual report shall include:

an introductory section including: a letter of transmittal to the governors of New York and New Jersey; information regarding the board of commissioners, Commission officers and executive management; a letter to the board of commissioners from the chief executive officer of the Commission highlighting important developments; a description of major Commission activities undertaken during the prior year; and a letter to the board of commissioners from the chief financial officer of the Commission with respect to the consolidated financial statements of the Commission.

a financial section including: an independent auditor's report; management's discussion and analysis; financial statements; its financial reports certified by the chair and vice-chair of the board, chief executive officer, and chief financial officer of the Commission, including audited financials in accordance with generally accepted accounting principles, known as GAAP, and the accounting standards issued by the governmental accounting standards board, known as GASB, grant and subsidy programs, current ratings, if any, of its bonds issued by recognized bond rating agencies and notice of changes in such ratings, and long-term liabilities, including leases and employee benefit plans; a schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year as part of a schedule of debt issuance that
includes the date of issuance, term, amount, interest rate, and means of repayment including all refinancings, calls, refundings, defeasements, and interest rate exchange or other such agreements; and at a minimum a four-year financial plan, including a current and projected capital budget, and an operating budget report, including an actual versus estimated budget, with an analysis and measurement of financial and operating performance.

a statistical section presenting additional information as context for further understanding of the information in the financial statements, note disclosures and schedules, including: financial trends; debt capacity; operating and service data; information on Commission operating results; information on Commission capital program components; information on Commission facility traffic; and selected statistical, demographic and economic data on the New York-New Jersey metropolitan region.

a corporate information section providing: a list of all real property of the Commission; a list and full description of real property and personal property that has a sale price of over $10,000 disposed of during the period, including the price received by the Commission and the name of the purchaser for all property sold by the Commission during the period; a compensation schedule that shall include, by position, title and name of the person holding such position or title, the salary, compensation, allowance and/or benefits provided to any officer, director, or employee in a decision making or managerial position of such Commission whose base salary is in excess of $150,000; biographical information, not including confidential personal information, for all directors and officers and employees for whom salary reporting is required; a description of the Commission and its board structure, including names of committees and committee members, lists of board meetings and attendance, descriptions of major authority units and subsidiaries, and number of employees; its mission statement, charter, if any, and by-laws; and a description of any material pending litigation in which the Commission is involved as a party during the reporting year.

10. (New section) Commission audits and financial statements.

a. The Commission shall prepare financial statements on an annual basis, in accordance with generally accepted accounting principles, known as GAAP, and the accounting standards issued by the governmental accounting standards board, known as GASB.

b. The audit committee of the board of commissioners of the Commission shall arrange for an independent firm of certified public accountants to perform an audit of the financial statements of the Commission each year, in accordance with generally accepted accounting principles and standards referenced in subsection a. of this section. Each independent firm of certified public accountants
that performs any audit required by this section shall timely report
to the board of the Commission:
(1) all critical accounting policies and practices to be used; and
(2) other material written communications, that is not privileged
or confidential, between the independent firm of certified public
accountants and the management of the Commission, including the
management letter along with management's response or plan of
corrective action, material corrections identified, or schedule of
unadjusted differences.

c. Every financial statement prepared pursuant to this section
shall be approved by the board of commissioners. As a condition to
the issuance of the annual financial statements of the Commission,
the chief executive officer and the chief financial officer of the
Commission shall be required to make a written certification to that
effect that, to the best of their knowledge and belief, the financial
and other information in the consolidated financial statements is
accurate in all material respects and has been reported in a manner
designed to present fairly the Commission’s net assets, changes in
net assets, and cash flows, in accordance with generally accepted
accounting principles and standards referenced in subsection a. of
this section; and, that on the basis that the cost of internal controls
should not outweigh their benefits, the Commission has established
a comprehensive framework of internal controls to protect its assets
from loss, theft, or misuse, and to provide reasonable assurance
regarding the reliability of financial reporting and the preparation of
the consolidated financial statements in accordance with generally
accepted accounting principles and standards referenced in
subsection a. of this section.

d. Notwithstanding any other provision of law to the contrary,
the Commission shall not contract with an independent firm of
certified public accountants for audit services to the Commission if
the lead or coordinating audit partner having primary responsibility
for the audit, or the audit partner responsible for reviewing the
audit, has performed audit services for the two previous fiscal years
of such Commission.

e. The Commission shall not contract with the independent
firm of certified public accountants performing the Commission's
audit for any non-audit services to such Commission
contemporaneously with the audit, unless receiving previous written
approval by the audit committee including:
(1) bookkeeping or other services related to the accounting
records or financial statements of such Commission;
(2) financial information systems design and implementation;
(3) appraisal or valuation services, fairness opinions, or
contribution-in-kind reports;
(4) actuarial services;
(5) internal audit outsourcing services;
(6) management functions or human services;
(7) broker or dealer, investment advisor, or investment banking services; and
(8) legal services and expert services unrelated to the audit.

f. The Commission shall not contract with an independent firm of certified public accountants for any audit service if the chief executive officer, comptroller, chief financial officer, treasurer, or any other person serving in an equivalent position for the Commission, was employed by that independent firm of certified public accountants and participated in any capacity in the audit of the Commission during the one year period preceding the date of the initiation of the audit.

g. The Commission shall make accessible to the public via its website an executive summary of its most recent independent audit report unless such information is exempt from disclosure pursuant to either state's freedom of information laws.

11. (New section) Contracts of the Commission.

a. Definitions. As used in this section, the following terms shall have the following meanings unless otherwise specified:

“Construction item” means any such item or material used in construction and which is procured directly by the Commission or office or any such item or material commonly used in construction which is procured by a person, other than a municipality, under contract with the Commission or office.

“Office” means the New York office of general services.

“Practicable” means capable of being used without violating the following criteria: performance, availability at a reasonable period of time and maintenance of a satisfactory level of completion.

“Product” means any material, supply, equipment or construction item or other item whether real or personal property which is the subject of any purchase, barter, or other exchange made to procure such product.

“Secondary materials” means any material recovered from or otherwise destined for the waste stream, including but not limited to, post-consumer material, industrial scrap material, and overstock or obsolete inventories from distributors, wholesalers and other companies as defined in rules and regulations promulgated by the New York commissioner of general services but such term does not include those materials and byproducts generated from, and commonly reused within an original manufacturing process.

“Specification” means any description of the physical or functional characteristics, or of the nature of a material, supply, equipment, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a material, supply, equipment, or construction item for delivery.

b. Specifications. The Commission shall create and update product specifications to ensure that:
Specifications do not exclude the use of products manufactured from secondary materials or require that products be manufactured from virgin materials only, provided however, the specifications may include such an exclusion if the Commission demonstrates that for a particular end use a product containing secondary materials would not meet necessary performance standards.

(2) Performance standards, specifications, and a product’s intended end use are related, and clearly identified when feasible.

(3) Specifications are not overly stringent for a particular end use or performance standard.

(4) Specifications incorporate or require the use of secondary materials to the maximum extent practicable without jeopardizing the performance or intended end use of the product; provided however, where the Commission demonstrates that for a particular end use a product containing secondary materials would not meet necessary performance standards, such specifications need not incorporate or require the use of secondary materials.

c. Ground for cancellation of contract by the Commission.

A clause shall be inserted in all specifications or contracts made or awarded by the Commission, for work or services performed or to be performed or goods sold or to be sold, to provide that upon the refusal by a person, when called before a grand jury, head of a state department, temporary state commission, or other agency of the state of New York or the state of New Jersey, the organized crime task force in the department of law of the state of New York, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the applicable state, any political subdivision thereof, a public authority or with any public department, agency or official of the state of New York or the state of New Jersey or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract, such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with the Commission or official thereof, for goods, work, or services, for a period of five years after such refusal.

d. Disqualification to contract with public authority.

Any person who, when called before a grand jury, head of a state department, temporary state commission or other state agency of the state of New York or the state of New Jersey, the organized crime task force in the department of law of the state of New York, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath,
to testify in an investigation concerning any transaction or contract
had with the applicable state, any political subdivision thereof, a
public authority or with a public department, agency, or official of
the state or of any political subdivision thereof or of a public
authority, refuses to sign a waiver of immunity against subsequent
criminal prosecution or to answer any relevant questions concerning
such transaction or contract, and any firm, partnership, or
corporation, of which he is a member, partner, director, or officer
shall be disqualified from thereafter selling to or submitting bids to
or receiving awards from or entering into any contracts with the
Commission or any official of the Commission, for goods, work, or
services, for a period of five years after such refusal or until a
disqualification shall be removed pursuant to the provisions of
subsection e. of this section.

It shall be the duty of the officer conducting the investigation
before the grand jury, the head of a state department, the chairman
of the temporary state commission or other state agency of the state
of New York or the state of New Jersey, the organized crime task
force in the department of law of the state of New York, the head of
a city department or other city agency before which the refusal
occurs to send notice of such refusal, together with the names of
any firm, partnership, or corporation of which the person so
refusing is known to be a member, partner, officer or director, to the
commissioner of transportation of the state of New York or state of
New Jersey, or the commissioner of general services as the case
may be, and the appropriate departments, agencies, and officials of
the applicable state, political subdivisions thereof or public
authorities with whom the persons so refusing and any firm,
partnership, or corporation of which he is a member, partner,
director, or officer, is known to have a contract. However, when
such refusal occurs before a body other than a grand jury, notice of
refusal shall not be sent for a period of 10 days after such refusal
occurs. Prior to the expiration of this 10 day period, any person,
firm, partnership, or corporation which has become liable to the
cancellation or termination of a contract or disqualification to
contract on account of such refusal may commence a special
proceeding at a special term of the supreme court of New York or
Superior Court of New Jersey, held within the judicial district in
which the refusal occurred, for an order determining whether the
questions in response to which the refusal occurred were relevant
and material to the inquiry. Upon the commencement of such
proceeding, the sending of such notice of refusal to answer shall be
subject to order of the court in which the proceeding was brought in
a manner and on such terms as the court may deem just. If a
proceeding is not brought within 10 days, notice of refusal shall
thereupon be sent as provided herein.

 e. Removal of disqualification of public contractors by
petition.
(1) Any firm, partnership, or corporation which has become subject to the cancellation or termination of a contract or disqualification to contract on account of the refusal of a member, partner, director, or officer thereof to waive immunity when called to testify, as provided in subsection d. of this section, may, upon 10 days’ notice to the attorney general of the state in which the refusal occurred and to the officer who conducted the investigation before the grand jury or other body in which the refusal occurred, commence a special proceeding at a special term of the supreme court of New York or Superior Court of New Jersey held within the judicial district in which the refusal occurred for a judgment discontinuing the disqualification. Such application shall be in the form of a petition setting forth grounds, including that the cooperation by petitioner with the grand jury or other body at the time of the refusal was such, and the amount and degree of control and financial interest, if any, in the petitioning firm, partnership, or corporation by the member, partner, officer, or director who refused to waive immunity is such that it will not be in the public interest to cancel or terminate petitioner’s contracts or to continue the disqualification, as provided subsection d. of this section. A copy of the petition and accompanying papers shall be served with the notices to be given pursuant to this section.

(2) Upon the filing of such petition the court may stay as to petitioner, pending a decision upon the petition, the cancellation or termination of any contracts resulting from such refusal upon such terms as to notice or otherwise as may be just.

(3) At least two days prior to the return day, the officer who conducted the investigation before the grand jury or other body and the attorney general may file answers to the petition or apply for judgment dismissing the petition as a matter of law. On or before the return day the petitioner may file a reply to the answer.

(4) Upon the return day the court may, upon the petition and answer and other papers filed, forthwith render such judgment as the case requires, or if a triable issue of fact is duly raised, it shall forthwith be tried before a court sitting without a jury or before a referee. The provisions of statute or rule governing references in an action shall apply to a reference under this section.

(5) The court shall render judgment dismissing the petition on the merits or discontinuing the disqualification upon the ground that the public interest would be served by its discontinuance, and granting such other relief as to the cancellation or termination of contracts as may be appropriate, but without costs to petitioner.

f. (1) Statement of non-collusion in bids or proposals to the Commission.

Every bid or proposal hereafter made to the Commission or to any official of the Commission, where competitive bidding is required by statute, rule, regulation, or local law, for work or services performed or to be performed or goods sold or to be sold,
shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

No attempt has been made or will be made by the bidder to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition."

A bid shall not be considered for award nor shall any award be made where the provisions of paragraph (1) of this subsection above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where the provisions of paragraph (1) of this subsection above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the Commission or official thereof determines that such disclosure was not made for the purpose of restricting competition. The fact that a bidder has published price lists, rates, or tariffs covering items being procured, has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure.

Any bid hereafter made to the Commission by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, regulation, or local law, and where such bid contains the certification referred to in paragraph (1) of this subsection, shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

g. Procurement contracts.

(1) Definitions. For the purposes of this subsection:

"Allowable indirect costs" means those costs incurred by a professional firm that are generally associated with overhead which cannot be specifically identified with a single project or contract
and are considered reasonable and allowable under specific state contract or allowability limits.

“Minority business enterprise” means any business enterprise, including a sole proprietorship, partnership, or corporation: with more than 50 percent of the ownership interest owned by one or more minority group members or, in the case of a publicly-owned business, where more than 50 percent of the common stock or other voting interests is owned by one or more minority group members; in which the minority ownership is real, substantial, and continuing; in which the minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and authorized to do business in the state of New York or the state of New Jersey, independently owned and operated, and not dominant in its field.

“Minority group member” means a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: black persons having origins in any of the black African racial groups not of Hispanic origin; Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; Asian and Pacific Islander persons having origins in any of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands; or Native American persons having origins in any of the original peoples of North America.

“Professional firm” means any individual or sole proprietorship, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture, engineering, or surveying.

“Women-owned business enterprise” means a business enterprise, including a sole proprietorship, partnership or corporation: with more than 50 percent of the ownership interest owned by one or more United States citizens or permanent resident aliens who are women or, in the case of a publicly-owned business, where more than 50 percent of the common stock or other voting interests is owned by United States citizens or permanent resident aliens who are women; in which the ownership interest of women is real, substantial, and continuing; in which the women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and authorized to do business in the state of New York or the state of New Jersey, independently owned and operated, and not dominant in its field.

(2) The Commission shall adopt by resolution comprehensive guidelines which detail the Commission’s operative policy and instructions regarding the use, awarding, monitoring and reporting of procurement contracts. Such guidelines shall be annually reviewed and approved by the Commission.

(3) For purposes of this subsection, procurement contracts shall mean any written agreement for the acquisition of goods or services
of any kind, in the actual or estimated amount of five thousand dollars or more.

(4) The guidelines approved by the commission shall include, but not be limited to the following:

(a) A description of the types of goods purchased, and for procurement contracts for services, a description of those areas of responsibility and oversight requiring the use of personal services and the reasons for the use of personal services in such areas.

(b) Requirements regarding the selection of contractors, which shall include provisions: for the selection of such contractors on a competitive basis, and provisions relating to the circumstances under which the board may by resolution waive competition, including, notwithstanding any other provision of law requiring competition, the purchase of goods or services from small business concerns or those certified as minority or women-owned business enterprises, or goods or technology that are recycled or remanufactured, in an amount not to exceed two hundred thousand dollars without a formal competitive process; describing when the award of procurement contracts shall require approval of the board by resolution, provided that any contract involving services to be rendered over a period in excess of one year shall require the approval of the board by resolution and an annual review of the contract by the board; setting forth responsibilities of contractors. The Commission shall not refuse to negotiate with a professional firm solely because the ratio of the allowable indirect costs to direct labor costs of the professional firm or the hourly labor rate in any labor category of the professional firm exceeds a limitation generally set by the Commission in the determination of the reasonableness of the estimated cost of services to be rendered by the professional firm, but rather the Commission should also consider the reasonableness of cost based on the total estimated cost of the service of the professional firm which should include, among other things, all the direct labor costs of the professional firm for such services plus all allowable indirect costs, other direct costs, and negotiated profit of the professional firm.

(c) An identification of those areas or types of contracts for which minority or women-owned business enterprises may best bid so as to promote and assist participation by such enterprises and facilitate a fair share of the awarding of contracts to such enterprises.

(d) Requirements for the designation of one or more senior staff of the Commission to oversee the Commission’s programs established to promote and assist: participation by certified minority or women-owned business enterprises in the Commission’s procurement opportunities and facilitation of the award of procurement contracts to such enterprises; the utilization of certified minority and women-owned business enterprises as subcontractors and suppliers by entities having procurement
contracts with the Commission; and the utilization of partnerships, joint ventures, or other similar arrangements between certified minority and women-owned business enterprises and other entities having procurement contracts with the Commission. Such staff shall be familiar with the procurement of the types of construction, financial, legal, or professional services utilized by the Commission, report directly to the Commission’s executive director, and either directly or through their designees participate in the procurement process.

(e) Requirements for providing notice, in addition to any other notice of procurement opportunities required by law, to professional and other organizations that serve minority and women-owned business enterprises providing the types of services procured by the Commission.

(f) Procedures for maintaining lists of qualified certified minority and women-owned business enterprises, including professional firms that have expressed an interest in doing business with the Commission and ensuring that such lists are updated regularly. The Commission shall also consult the lists of certified minority and women-owned business enterprises maintained by executive branch departments in the state of New York and in the state of New Jersey.

(g) The establishment of appropriate goals for participation by minority or women-owned business enterprises in procurement contracts awarded by the Commission and for the utilization of minority and women-owned enterprises as subcontractors and suppliers by entities having procurement contracts with the Commission. Numerical goals for participation targets shall be established by the Commission.

(h) Requirements to conduct procurements in a manner that will enable the Commission to achieve the maximum feasible portion of the goals established pursuant to this paragraph and that eliminates barriers to participation by minority and women-owned business enterprises in the Commission’s procurements. Such procurement requirements shall include the following:

Measures and procedures to ensure that certified businesses shall be given the opportunity for maximum feasible participation in the performance of state contracts and to assist in the Commission’s identification of those state contracts for which certified businesses may best bid to actively and affirmatively promote and assist their participation in the performance of state contracts so as to facilitate the Commission’s achievement of the maximum feasible portion of the goals for state contracts to such businesses;

Provisions designating the New York division of minority and women’s business development to certify and decertify minority and women-owned business enterprises through a single process that meets applicable state and federal requirements;
A requirement that each contract solicitation document accompanying each solicitation set forth the expected degree of minority and women-owned business enterprise participation based, in part, on: the potential subcontract opportunities available in the prime procurement contract; and the availability of certified minority and women-owned business enterprises to respond competitively to the potential subcontract opportunities;

A requirement that the Commission provide a current list of certified minority business enterprises to each prospective contractor;

Provisions relating to joint ventures, under which a bidder may count toward meeting its minority business enterprise participation goal, the minority and women-owned business enterprise portion of the joint venture;

Provisions under which the Commission may waive obligations of the contractor relating to minority and women-owned business enterprise participation after a showing of good faith efforts to comply with the requirements of this subsection;

A requirement that the Commission verify that minority and women-owned business enterprises listed in a successful bid are actually participating to the extent listed in the project for which the bid was submitted;

In the implementation of this section, the Commission shall: consider, where practicable, the severability of construction projects and other bundled contracts; implement a program that will enable the Commission to evaluate each contract to determine the appropriateness of the goal pursuant to this subsection; consider compliance with the requirements of any federal law concerning opportunities for minority and women-owned business enterprises which effectuates the purpose of this section; and consult any relevant disparity studies conducted pursuant to the laws of New York or New Jersey.

(i) A listing of the types of provisions to be contained in procurement contracts, including provisions concerning the nature and monitoring of the work to be performed, the use of Commission supplies and facilities, the use of Commission personnel and any other provisions.

(j) Provisions regarding procurement contracts which involve former officers or employees of the Commission.

(k) Procedures regarding procurement contracts which are exempt from the publication requirements of article four-C of New York’s economic development law.

(l) Policies to promote the participation by business enterprises and residents of the state of New York and the state of New Jersey in procurement contracts, including, but not limited to:

providing for the Commission to collect and to consult the specifications of New York state and New Jersey business enterprises in developing specifications for any procurement
contract for the purchase of good where possible, practicable, feasible and consistent with open bidding, except for procurement contracts for which the Commission would be expending funds received from states other than New York or New Jersey. The Commission shall, where feasible, make use of the stock item specification forms prepared by the New York commissioner of general services, and where necessary, consult with the New York commissioner of the office of general services, in developing such specifications and make such determinations;

with the cooperation of the New York department of economic development and through cooperative efforts with contractors, providing for the notification of New York state and New Jersey business enterprises of opportunities to participate as subcontractors and suppliers on procurement contracts let by the Commission in an amount estimated to be equal to or greater than one million dollars and promulgating procedures which will assure compliance by contractors with such notification. Once awarded the contract such contractors shall document their efforts to encourage the participation of New York state or New Jersey business enterprises as suppliers and subcontractors on procurement contracts equal to or greater than one million dollars. Documented efforts by a successful contractor shall consist of and be limited to showing that such contractor has: solicited bids, in a timely and adequate manner, from New York state or New Jersey business enterprises including certified minority and women-owned business; contacted the New York state department of economic development to obtain listings of New York state business enterprises; placed notices for subcontractors and suppliers in newspapers, journals, and other trade publications distributed in New York state or New Jersey, or participated in bidder outreach conferences. If the contractor determines that New York state or New Jersey business enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made. If the contractor does not intend to use subcontractors on the contract, the contractor shall provide a statement verifying such intent;

except for procurement contracts for which the Commission would be expending funds received from another state, the Commission shall include in all bid documents provided to potential bidders a statement that information concerning the availability of New York state subcontractors and suppliers is available from the New York state department of economic development, which shall include the directory of certified minority and women-owned businesses, and it is the policy of New York state to encourage the use of New York state subcontractors and suppliers, and to promote the participation of minority and women-owned businesses where possible, in the procurement of goods and services;
with the cooperation of the community services division of the
New York department of labor and through cooperative efforts with
contractors, providing for the notification of New York state
residents of employment opportunities arising in New York state
out of procurement contracts let by the Commission in an amount
estimated to be equal to or greater than one million dollars; and
promulgating procedures which will assure compliance by
contractors with such notification by requiring contractors to submit
post-award compliance reports documenting their efforts to provide
such notification through listing any such positions with the
community services division, or providing for such notification in
such manner as is consistent with existing collective bargaining
contracts or agreements;
including in each set of documents soliciting bids on
procurement contracts to let by the Commission a statement
notifying potential bidders located in foreign countries that the
Commission may assign or otherwise transfer offset credits created
by such procurement contract to third parties located in New York
state; providing for the assignment or other form of transfer of
offset credits created by such procurement contracts, directly or
indirectly, to third parties located in New York state, in accordance
with the written directions of the New York commissioner of
economic development; and providing for the corporation to
otherwise cooperate with the department of economic development
in efforts to get foreign countries to recognize offset credits
assigned or transferred to third parties located in New York state
created by such procurement contracts; and
promulgating procedures which will assure compliance with the
federal “Equal Employment Opportunity Act of 1972” (Pub. L. 92-
261), as amended, by contractors of the corporation.
(m) For the purposes of this section:
“New Jersey business enterprise” means a business enterprise,
including a sole proprietorship, partnership, or corporation, which
offers for sale or lease or other form of exchange, goods which are
sought by the Commission and which are substantially
manufactured, produced, or assembled in New Jersey, or services
which are sought by the Commission and which are substantially
performed within New Jersey.
“New Jersey resident” means a natural person who maintains a
fixed, permanent, and principal home located within New Jersey
and to which such person, whenever temporarily located, always
intends to return.
”New York resident” means a natural person who maintains a
fixed, permanent and principal home located within New York state
and to which such person, whenever temporarily located, always
intends to return.
”New York state business enterprise” means a business
enterprise, including a sole proprietorship, partnership, or
corporation, which offers for sale or lease or other form of
exchange, goods which are sought by the Commission and which
are substantially manufactured, produced, or assembled in New
York state, or services which are sought by the Commission and
which are substantially performed within New York state.

(5) The Commission shall have the power from time to time to
amend such procurement contract guidelines in accordance with the
provisions of this section.

(6) The Commission, as part of the guidelines established
pursuant to this section, shall establish policies regarding the
preparation of publicly available reports on procurement contracts
entered into by such corporation. Such policies shall provide, at the
minimum, for the preparation of a report no less frequently than
annually, summarizing procurement activity by the Commission for
the period of the report, including a listing of all procurement
contracts entered into, all contracts entered into with New York
state and New Jersey business enterprises and the subject matter
and value thereof, all contracts entered into with certified minority
or women-owned business enterprises and the subject matter and
value thereof, all referrals made and all penalties imposed pursuant
to section three hundred sixteen of the executive law, all contracts
entered into with foreign business enterprises, and the subject
matter and value thereof, the selection process used to select such
contractors, all procurement contracts which were exempt from the
publication requirements pursuant to the laws of one or both of the
states.

(7) The Commission shall annually prepare and approve a report
on procurement contracts which shall include the guidelines, as
specified in this section, an explanation of the guidelines and any
amendments thereto since the last annual report. Such report on
procurement contracts may be a part of any other annual report that
the corporation is required to make.

(8) The Commission shall annually submit its report on
procurement contracts to the Governor of New York and the
Governor of New Jersey and copies thereof to the New York Senate
Finance Committee, New Jersey Senate Budget Committee, the
New York Assembly Ways and Means Committee, and the New
Jersey General Assembly Appropriations Committee. The
Commission shall make available to the public copies of its report
on procurement contracts upon reasonable request therefor.

(9) Nothing contained in this section 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 section.

h. Comptroller approval of contracts.

(1) Except as set forth in paragraph (3) of this subsection, where
the comptroller of the state of New York or the comptroller of the
state of New Jersey determines pursuant to his or her authority to
supervise the accounts of the Commission, that contracts or
categories of contracts in excess of one million dollars: to be
awarded by the Commission to a single source, a sole source or
pursuant to any other method of procurement that is not
competitive; or which are to be paid in whole or in part from
monies appropriated by each respective state to the Commission for
such contractual expenditure, require supervision in the form of
prior review and approval of such contracts, and the comptroller of
the state of New York or the comptroller of the state of New Jersey
so notifies the Commission of such determination, then any such
contract entered into subsequent to such notification shall be
submitted to the respective comptroller of the state of New York or
the comptroller of the state of New Jersey for his or her approval
and shall not be a valid enforceable contract unless it shall first
have been approved by the respective comptroller of the state of
New York or the comptroller of the state of New Jersey. Such
notification shall identify the process for submission, the categories
of contracts at issue and the time period for which such submission
is to take place. The comptroller of the state of New York and the
comptroller of the state of New Jersey shall promulgate such rules
and regulations as may be necessary to carry out his or her
responsibilities under this section, including but not limited to the
standards for determining which contracts will be subject to his or
her review and for approving such contracts

(2) Where the comptroller of the state of New York or the
comptroller of the state of New Jersey, pursuant to paragraph (1),
has notified the Commission that any contract or category of
contracts shall be subject to his or her approval, the Commission
shall include or cause to be included in each such contract a
provision informing the other party that such contract is subject to
the comptroller of the state of New York or the comptroller of the
state of New Jersey’s approval pursuant to the respective
comptroller’s authority to supervise the accounts of the
Commission. If the comptroller of the state of New York or the
comptroller of the state of New Jersey has not approved or
disapproved any contract subject to his or her approval within 90
days of submission to his or her office, such contract shall become
valid and enforceable without such approval.

(3) This subsection shall not apply to: contracts entered into for
the issuance of commercial paper or bonded indebtedness, other
than contracts with the state of New York or the state of New Jersey
providing for the payment of debt service subject to an
appropriation; contracts of purchase or sale of energy, electricity or
ancillary services made by the Commission on a recognized market
for goods, services, or commodities in question in accordance with
standard terms and conditions of purchase or sale at a market price;
contracts for the purchase, sale, or delivery of power or energy,
fuel, costs, and services ancillary thereto, or financial products
related thereto, with a term of less than five years; and contracts entered into for the procurement of goods, services or both goods and services made to meet emergencies arising from unforeseen causes or to effect repairs to critical infrastructure that are necessary to avoid a delay in the delivery of critical services that could compromise the public welfare.

(4) The provisions of this subsection shall not grant or diminish any power or right to review contracts beyond or from that which the comptroller of the state of New York or the comptroller of the state of New Jersey may have pursuant to his or her authority. If any provisions of this section or its application to any person or circumstance is held invalid by a court of last resort, then this section shall be deemed to be invalid in its entirety.

12. (New section) Subsidiaries of the Commission.

a. The Commission shall provide notice to the governor of each state, the majority leader of each house of the legislature of each state, the Chair of the Senate Finance Committee of New York, the Chair of the Senate Budget and Appropriations Committee of New Jersey, the Chair of the Assembly Ways and Means Committee of New York, and the Chair of the Assembly Budget Committee of New Jersey that it will be creating a subsidiary no less than 60 days prior to the formation of the subsidiary.

b. The creation of a subsidiary corporation shall be approved by the board of commissioners.

c. Within 60 days of the effective date of P.L. , c. (pending before the Legislature as this bill), and on or before the first day of January of each year annually thereafter, any subsidiary corporation, in cooperation with the Commission, shall provide to the governor and legislature of each state a report on the subsidiary corporation. The report shall include for each subsidiary:

(1) The complete legal name, address, and contact information of the subsidiary;

(2) The structure of the organization of the subsidiary, including the names and titles of each of its members, directors, and officers, as well as a chart of its organizational structure;

(3) The complete bylaws and legal organization papers of the subsidiary;

(4) A complete report of the purpose, operations, mission, and projects of the subsidiary; and

(5) Any other information the subsidiary corporation deems important to include in the report.

d. Sixty days prior to the issuance of any debt by the subsidiary corporation, or the Commission on behalf of the subsidiary corporation, the Commission shall, in addition to any other requirements concerning the issuance of debt by the Commission, provide notice to the governor of each state, the majority leader of
each house of the legislature of each state, the Chair of the Senate Finance Committee of New York, the Chair of the Senate Budget and Appropriations Committee of New Jersey, the Chair of the Assembly Ways and Means Committee of New York, and the Chair of the Assembly Budget Committee of New Jersey. For purposes of this section, as applicable to New York state “majority leader” shall mean the Speaker of the Assembly of the New York State Legislature or Temporary President of the Senate of the New York State Legislature. For purposes of this section, as applicable to the State of New Jersey “majority leader” shall mean the President of the Senate or the Speaker of the General Assembly of the State of New Jersey.

13. (New section) a. Disposition of property by the Commission.

   (1) Any sale of real property by the Commission shall be undertaken and conducted pursuant to the provisions of the existing laws governing the sale of real property by the Commission in the state in which such real property is located and by approval of the board of commissioners.

   (2) No disposition of real property, or any interest in real property, shall be made unless an appraisal of the value of such real property has been made by an independent appraiser and included in the record of the transaction, and, provided further, that no disposition of any other real property, which because of its unique nature or the unique circumstances of the proposed transaction is not readily valued by reference to an active market for similar real property, shall be made without a similar appraisal.

   (3) Disposal of real property for less than fair market value. No property owned, leased, or otherwise in the control of the Commission may be sold, leased, or otherwise alienated for less than its fair market value unless:

       the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the real property will remain with the government or any other public entity; or

       the purpose of the transfer is within the purpose, mission, or governing statute of the Commission and a written determination is made by the board of commissioners that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer, prior to board approval of such a transfer.

   (4) The board of commissioners shall adopt, within six months of the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), appropriate rules and regulations concerning disposition, acquisition, and transfer of real property or any interest in real property by the Commission which shall, at a minimum, include a requirement that the following information be
made available to the board of commissioners at the meeting where
approval of such a disposition, acquisition or transfer is scheduled:

- a full description of the property;
- a description of the purpose of the disposition, acquisition, or
  transfer;
- a statement of the value to be received from such a disposition, acquisition, or transfer;
- the names of any private parties participating in the disposition, acquisition, or transfer; and
- in the case of a property disposition for less than fair market value, an explanation and a written determination by the board of commissioners that there is no reasonable alternative to the proposed below-market value that would achieve the same purpose of such disposition.

(5) Not less than 10 days in advance of any meeting of the board of commissioners of the Commission at which the board of commissioners is to consider an action to authorize the sale of real property owned by the Commission, the chief executive officer of the Commission shall provide public notice of such proposed action along with relevant material terms and provisions of such sale including, but not limited to, the information made available pursuant to paragraph (4) of this subsection, by posting on the Commission’s website.

(6) The chief executive officer may authorize or arrange for contracts for the sale of personal property owned by the Commission upon such terms and conditions as the chief executive officer may deem proper and execute the same on behalf of the Commission where the value of such personal property is not in excess of $1,000,000; provided, however, that personal property valued at more than $250,000 shall not be sold by authority of the chief executive officer other than to the highest bidder after public advertisement. Where the value of such personal property is in excess of $1,000,000, the sale of such property must be authorized by the board of commissioners of the Commission upon such terms as the board of commissioners may deem proper.

(7) The Commission may retain brokers or third-party vendors that facilitate online auctions, or assist in disposing of surplus real and personal property of the Commission.

b. Capital plan.

(1) The Commission shall adopt a 10-year capital plan that is developed using a comprehensive planning process and risk-based prioritization that considers asset condition, operational and revenue impact, threat assessment, customer service, regional benefit, and regulatory or statutory requirements. The capital plan shall be dependent upon the availability of sufficient funding and other resources to pursue the capital projects proposed for the 10-year period. Performance progress and revisions to reflect changes in programs, policies, and projects and the environment in which the
Commission operates shall be reviewed regularly by a committee designated by the board of commissioners, and the capital plan shall be revised periodically as necessary and appropriate, and shall be reviewed with the board of commissioners annually. The Commission shall publish an annual report on the status of the capital program and such report shall be made publicly available on the Commission’s website. Prior to adoption of a capital plan, the Commission shall make the proposed plan available for public review and comments on its public website for at least four weeks prior to approval, and all comments received by the Commission are to be distributed to the board of commissioners for review prior to consideration of the capital plan.

(2) The Commission shall also provide that major capital projects are monitored by independent engineering consultants. The independent consultants shall prepare annual reports to be provided to the board and made available to the public. The annual reports prepared by independent consultants shall include, but not be limited to, a comparison of actual and target performance measures including, but not limited to, costs and construction schedules, and a narrative explanation of any discrepancy thereof. For the purposes of this section: “Major capital project” means an undertaking or program for the acquisition, creation, or development of any crossing, transportation facility, or commerce facility or any part thereof, with an estimated total project cost in excess of $500,000,000.

(3) No less than 60 days prior to any board adoption of a capital plan, as described in paragraph (1) of this subsection, or any major revision of the last adopted capital plan, the Commission shall: notify the Assembly and Senate of the New York state legislature and the General Assembly and Senate of the New Jersey state legislature of its intention to adopt a capital plan, or any major revision of the last adopted capital plan; submit to the Assembly and Senate of the New York state legislature and the General Assembly and Senate of the New Jersey state legislature the proposed capital plan, or any proposal constituting a major revision of the last adopted capital plan, for review by each state legislature; and make the proposed capital plan, including any proposal constituting a major revision of the last adopted capital plan, publicly available on the Commission’s website. In either case, the notice shall recite the major elements of the capital plan to be adopted.

(4) Within 60 days of the notice provided in paragraph (3) of this subsection, the Commission shall conduct a public hearing about the capital plan or any major revision thereof in New York state and in the State of New Jersey.

(5) The Commission shall conduct a status update public hearing in New York state and in the State of New Jersey at least once every three years after the adoption of the capital plan by the
Commission. Such public hearing shall be known as “capital status update hearing” and at such hearing the Commission shall provide in detail a written description of the status of all capital plan projects and the costs and the expected costs of those projects. At such public hearing, the Commission shall provide a financing plan that identifies the source of funding for each project. The Commission shall provide an analysis that compares actual and target performance measures, and a detailed written explanation of any discrepancy thereof at the public hearing.

c. Operating budget. The Commission shall prepare a detailed annual operating budget beginning with the fiscal year commencing after the effective date of this act. A preliminary annual operating budget shall be made publicly available on the Commission's website in July of every fiscal year and a final annual operating budget shall be made publicly available in February of each fiscal year.

14. (New section) Exemption from taxes, local taxes.
   a. The Commission shall be performing essential governmental functions in exercising its powers and functions and in carrying out the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill) and of any law relating thereto, and shall not be required to pay any taxes or assessments of any character, levied by either state or any local government thereof, upon any of the property used by it or its agents or contractors for the Facilitation of the Gateway Program, or any income or revenue therefrom, including any profit from a sale, lease, or exchange, or in connection with the transfer thereof or of any real property interest therein. Any bonds or other securities or obligations issued by the Commission, their transfer and the interest paid thereon or income therefrom, including any profit from a sale or exchange, shall at all times be free from taxation by either state or any subdivision thereof.

   b. The Commission shall, as a matter of policy, conform to the enactments, ordinances, resolutions, and regulations of the respective states and local governments where the Gateway Program is located in regard to the construction and maintenance of the Gateway Program and in regard to health and fire protection which would be applicable if the Commission were a private corporation, to the extent that the Commission finds it practicable to do so, without interfering with, impairing, or affecting the efficiency of its purposes under P.L. , c. (C. ) (pending before the Legislature as this bill), or its ability to effectuate the Gateway Program upon a self-supporting basis, or its obligations, duties, and responsibilities to the two states, its bondholders (if any) and the general public, but the decision of the Commission as to whether it is practicable so to do shall be controlling. To that end, the Commission shall submit copies of plans and specifications for
buildings and structures to the appropriate state and local
government officials and shall consult with them with respect
thereto, and shall receive their comments and suggestions thereon,
but the Commission shall make the final determination as to which
comments and suggestions to accept in effectuating the Gateway
Program.

15. (New section) Cooperation with governmental entities.

Notwithstanding any other provision of state, general, special,
charter, or local law to the contrary, each state and local
government, any agency, instrumentality, department, commission,
or authority thereof, and any bi-state agency are hereby authorized
and empowered to cooperate with, aid, and assist the Commission
in effectuating the provisions of P.L. , c. (C. ) (pending
before the Legislature as this bill), as it may be amended or
supplemented hereafter.

16. (New section) Consent to suit, actions, or proceedings.

Upon the concurrence of the State of New York, the State of
New Jersey and the State of New York consent to suits, actions, or
proceedings of any form or nature at law, in equity, or otherwise
(including proceedings to enforce arbitration agreements) against
the Commission, and to appeals therefrom and reviews thereof,
except as hereinafter provided. The foregoing consent does not
extend to: (1) suits, actions, or proceedings upon any causes of
action whatsoever accruing before the effective date of P.L. , c.
(C. ) (pending before the Legislature as this bill); (2) suits,
actions, or proceedings upon any causes of action whatsoever, upon,
in connection with, or arising out of any contract, express or
implied, entered into or assumed by or assigned to the Commission
before the effective date of P.L. , c. (C. ) (pending before
the Legislature as this bill) (including any supplement to, or
amendment, extension, or renewal of any such contract, even if
such supplement, amendment, extension, or renewal is made on or
after the effective date of P.L. , c. (C. ) (pending before the
Legislature as this bill)), regardless of whether such cause of action
accrued before or after that date; (3) civil suits, actions, or
proceedings for the recovery of statutory penalties; and (4) suits,
actions, or proceedings for judgments, orders, or decrees
restraining, enjoining, or preventing the Commission from
committing or continuing to commit any act or acts, other than
suits, actions, or proceedings by the Attorney General of New
Jersey or by the Attorney General of New York, each of whom is
hereby authorized to bring such suits, actions, or proceedings in the
attorney general’s discretion on behalf of any person or persons
whatsoever who requests the attorney general so to do except in the
cases otherwise excluded by P.L. , c. (C. ) (pending before
the Legislature as this bill); provided, that in any such suit, action,
or proceeding, no judgment, order, or decree shall be entered except upon at least two days’ prior written notice to the Commission of the proposed entry thereof.

The Commission shall be immune from liability in the State of New Jersey in the same manner and to the same extent as is the State of New Jersey under the provisions of the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., and the “New Jersey Contractual Liability Act,” N.J.S.59:13-1 et seq.

17. (New section) Dissolution.
   a. The Commission shall dissolve on the first day of the 36th month following the completion of the Gateway Program, provided that plans have been adopted for the transfer of the component projects of the Gateway Program to appropriate agencies, instrumentalities, or entities, which shall include repayment of or an arrangement for the full repayment of any bonds or other securities issued and any other debt incurred for Gateway Program purposes without impairment of the creditworthiness of either state and that any receiving agency, instrumentality, or entity enters into an agreement concerning responsibility for maintenance and upkeep of the relevant component project, and further provided that Amtrak is not unduly prejudiced by such dissolution.
   b. The Governor of New Jersey and the Governor of New York may jointly determine that dissolution of the Commission on the first day of the 36th month is impractical and may jointly agree to delay the dissolution until the first day of the 48th month following completion of the Gateway Program to resolve any issues concerning transfer or any component projects or resolution of any outstanding debt or to remedy any undue prejudice to Amtrak resulting from dissolution at an earlier date.
   c. The Commission shall not remain in existence beyond the first day of the 48th month following completion of the Gateway Program.

18. (New section) Amendment to agreement.
   The provisions of this agreement may be amended, altered, supplemented, or repealed from time to time by the action of the legislature of either state concurred in by the legislature of the other.
   For the purposes of this section, “this agreement” means sections 1 through 19 of P.L. , c. (C. ) (pending before the Legislature as this bill).

19. (New section) Severability.
   If any provision of P.L. , c. (C. ) (pending before the Legislature as this bill), or the application thereof to any person or circumstance is held invalid, including as not in accordance with federal law or federal constitutional requirements, such invalidity
shall not affect other provisions or applications of P.L. , c. (C. ) (pending before the Legislature as this bill) which can be given effect without the invalid provision or application and to this end the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill) are declared to be severable.

20. (New section) a. There shall be three commissioners of the Gateway Development Commission appointed from this State, in accordance with section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill) who shall each serve at the pleasure of the Governor.

b. One commissioner shall be appointed by the Governor with the advice and consent of the Senate. One commissioner shall be appointed by the Governor upon the recommendation of the Speaker of the General Assembly. One commissioner shall be appointed by the Governor upon the recommendation of the President of the Senate.

c. All vacancies in the office of commissioner of the Gateway Development Commission shall be filled in the same manner as the original appointment.

d. Each appointment to fill a vacancy occurring or existing by reason of the expiration of a term, shall be for a term expiring on the first day of July in the third year following the date of the expiration of the term of the appointee's predecessor. Each appointment made to fill a vacancy occurring or existing by reason other than the expiration of term shall be for the unexpired portion of the term of the appointee's predecessor.

e. All commissioners from this State shall continue to hold office after the expiration of the terms for which they are appointed and until their respective successors are appointed and qualified. No period during which any such commissioner shall hold over shall be deemed to be an extension of the commissioner’s term of office for the purpose of computing the date on which a successor's term expires.

f. Any commissioner from this State may be removed from office through the adoption of articles of impeachment by the General Assembly which are delivered to the Senate and following a trial and vote by the Senate on those articles of impeachment. Any such trial shall be conducted in accordance with rules adopted by the Senate.

g. Pursuant to subsection c. of section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill), the Legislature hereby determines that the collective vote of the New Jersey members of the Gateway Development Commission shall be determined by the affirmative vote of at least two of the New Jersey commissioners.
21. (New section) a. The minutes of every meeting of the Gateway Development Commission held under or within the purview of P.L. , c. (C. ) (pending before the Legislature as this bill) shall be forthwith transmitted, by and under the certification of the secretary thereof, to the Governor of this State. No action taken at such meeting by any commissioner appointed from this State shall have force or effect for a period of 10 days, Saturdays, Sundays, and public holidays excepted, after the minutes shall have been so transmitted and delivered unless the Governor shall finally approve the minutes or any part thereof, reciting any such action, within said 10-day period.

b. The Governor shall, within 10 days, exclusive of Saturdays, Sundays, or public holidays, after the minutes shall have been so delivered, cause the same to be returned to the Gateway Development Commission either with or without his veto on any action therein recited as having been taken by any commissioner appointed from this State. If the Governor does not return the minutes within said 10-day period, any action therein recited shall have force and effect according to the wording thereof.

22. Section 5 of P.L.1966, c.301 (C.27:1A-5) is amended to read as follows:

5. The commissioner, as head of the department, shall have all of the functions, powers and duties heretofore vested in the State Highway Commissioner and shall, in addition to the functions, powers and duties vested in him by this act or by any other law:

(a) Develop and maintain a comprehensive master plan for all modes of transportation development, with special emphasis on public transportation. Such plan shall be revised and updated at least every five years;

(b) Develop and promote programs to foster efficient and economical transportation services in the State;

(c) Prepare plans for the preservation, improvement and expansion of the public transportation system, with special emphasis on the coordination of transit modes and the use of rail rights of way, highways and public streets for public transportation purposes;

(d) Enter into contracts with the New Jersey Transit Corporation for the provision and improvement of public transportation services;

(e) Coordinate the transportation activities of the department with those of other public agencies and authorities;

(f) Cooperate with interstate commissions and authorities, State departments, councils, commissions and other State agencies, with appropriate federal agencies, and with interested private individuals and organizations in the coordination of plans and policies for the development of air commerce and air facilities;

(g) Make an annual report to the Governor and the Legislature on the department's operations, and render such other reports as the
Governor shall from time to time request or as may be required by law;

(h) Promulgate regulations providing for the charging of and setting the amount of fees for certain services performed by and permits issued by the department, including but not limited to the following:

(1) Providing copies of documents prepared by or in the custody of the department;

(2) Aeronautics permits;

(3) Right-of-way permits;

(4) Traffic signal control systems;

(i) Develop and promote programs for the preservation, improvement and expansion of freight railroads, with special emphasis on the use of rail rights of way for the purpose of providing rail freight service;

(j) Develop and promote a program to ensure the safety and continued operation of aviation facilities in New Jersey;

(k) Enter into agreements with a public or private entity or consortia thereof to provide for the development of demonstration projects through the use of public-private partnerships pursuant to sections 1 through 9 of P.L.1997, c.136 (C.27:1D-1 through C.27:1D-9);

(l) Do any and all things necessary, convenient or desirable to effectuate the purposes of P.L.1966, c.301 (C.27:1A-1 et seq.) and to exercise the powers given and granted in that act; and

(m) Enter into agreements or contracts with a private entity and charge and collect fees or other payments for the placement of sponsorship acknowledgment and advertising on signs, equipment, materials, and vehicles used for a safety service patrol or emergency service patrol program operated by the department, or operated by a private entity under contract with the department or through the use of a public-private partnership or demonstration project; and

(n) Acquire by eminent domain, pursuant to the eminent domain law and R.S.27:7-22, any property, property rights, or property interests, including easements, air rights, below-grade and subsurface rights, hereinafter referred to as “Property Interests,” including rights on property now or previously designated as parkland or dedicated to a public use, provided that such Property Interests are located in the State and, in the judgment of the commissioner, are necessary or appropriate for the construction, reconstruction, development, redevelopment, use, occupancy, operation, and maintenance of passenger rail transportation facilities and ancillary facilities between New Jersey and New York Penn Station, in a corridor beginning at or near Newark Penn Station and ending at the boundary of the State of New Jersey in the Hudson River. Property Interests may be acquired pursuant to this subsection notwithstanding any requirement in R.S.27:7-36 or any other provision of law, general, special, charter, or local, and
regardless of whether the Property Interests are or were dedicated to public use. All of such Property Interests may be acquired by the commissioner pursuant to applicable provisions of the eminent domain law and R.S.27:7-22, provided that any acquisition of Property Interests pursuant to this subsection shall be contingent on the commissioner entering into an agreement addressing such acquisition with the Gateway Development Commission, approved in accordance with that entity’s authorizing statute, and the Gateway Development Commission shall agree to pay the costs incurred by the commissioner in acquiring such Property Interests pursuant to the eminent domain law. Notwithstanding any other provision of law, general, special, charter, or local, following acquisition, the commissioner may use such property together with property already owned or held, to: enter into contracts to sell, transfer, lease, or exchange with, or grant easements, licenses, permits, concessions, or other authorizations to, the Gateway Development Commission sufficient to permit the construction, reconstruction, development, redevelopment, use, occupancy, operation, and maintenance by the Gateway Development Commission or its permittees and successors, of the aforementioned passenger rail facilities and ancillary facilities. Authorization is hereby given to the commissioner to do all things necessary or appropriate to carry out the purposes of this subsection.

(cf: P.L.2011, c.133, s.1)

23. Sections 1 through 19 of this act shall take effect upon the enactment into law by the State of New York of legislation having an identical effect with sections 1 through 19 of this act, but if the State of New York shall have already enacted such legislation, sections 1 through 19 of this act shall take effect immediately. Sections 20 through 22 of this act shall take effect immediately but shall remain inoperative until sections 1 through 19 of this act take effect.

STATEMENT

This bill establishes the Gateway Development Commission ("GDC") for the primary purpose of constructing the transportation projects known as the Gateway Program. The Gateway Program is intended to maintain and increase passenger rail capacity, reliability, safety, and security between New Jersey and New York and consists of the following component projects: the Hudson Tunnel project; the Portal North Bridge project; the Portal South Bridge project; the Hudson Yards right-of-way preservation project; the Sawtooth Bridge replacement project; the Moynihan Station construction and Penn Station rehabilitation project; the Secaucus
Loop project; the Secaucus Junction renovation and expansion project; and the Penn Station South project.

*Purposes*

The purposes of the GDC are to facilitate the Gateway Program, serve the mutual interests of New Jersey, New York, and the National Railroad Passenger Corporation (“Amtrak”), act as a lead agency to facilitate the Gateway Program, pursue efforts to assist federal and state agencies and other entities to further passenger rail transportation between the two states, and to take any and all actions that may be necessary or appropriate to qualify for financial assistance, loans, grants, or other funding that may be available for the Gateway Program.

*Commission membership*

The GDC is to consist of nine commissioners, with three commissioners appointed by New York, three commissioners appointed by New Jersey, and three commissioners appointed by Amtrak. Commissioners are required to take and subscribe an oath of office, execute a commissioner’s statement, and participate in board training. The bill establishes requirements for when commissioners are required to recuse themselves from GDC actions and requires the commissioners from New York and New Jersey to file annual financial disclosure statements consistent with the state law from which the commissioner is appointed.

*Organization of the commission*

The chairperson of the GDC is to serve from among the members appointed by New York and New Jersey with the chairpersonship alternating between the two states on an annual basis. Which commissioner serves as chairperson is to be determined by the laws of each respective state. A member appointed by Amtrak is to serve as the vice chairperson.

The powers of the GDC may be exercised by the commissioners at a meeting duly noticed and held where a majority of commissioners are present. New Jersey, New York, and Amtrak each possess one collective vote, which is to be cast in accordance with the laws of New Jersey, the laws of New York, and as determined by Amtrak, respectively. Under the bill, the New Jersey vote may be cast only upon the affirmative vote of two New Jersey commissioners. Action may be taken and motions and resolutions adopted by the GDC only through the unanimous affirmative vote of each party to the GDC. The bill provides that each state may provide for a gubernatorial veto over any action of any commissioner appointed therefrom. The bill provides that the
Governor of New Jersey has 10 business days after the meeting minutes are provided to the Governor to review actions taken at a GDC meeting. During that 10-day period, the Governor may approve the meeting minutes or may veto any action therein recited as having been taken by any New Jersey commissioner. If the Governor does not return the meeting minutes within 10 days, the minutes are deemed approved.

**Transparency and accountability measures**

The GDC is required to establish a committee structure that includes at least responsibilities concerning governance, audits, and finance. The GDC is required to adopt bylaws, rules, and regulations concerning the right of the public to be present at meetings of the GDC and to obtain records of the GDC. The GDC is required to adopt a mission statement that the GDC’s mission is to serve the mutual interests of the state of New Jersey, state of New York, and Amtrak by facilitating the Gateway Program. The GDC is required to adopt a code of conduct, establish a whistleblower access and assistance program, establish a policy concerning contact with lobbyists for commissioners, officers, and employees with decision-making authority, and have an efficiency study of the GDC conducted by an independent entity at least every three years.

The bill provides for duties and powers of an inspector general, who is responsible for receiving and investigating all complaints regarding fraud, waste, and abuse by commissioners, officers, and employees of the GDC. The inspector general is empowered to: administer oaths and examine witnesses; require the production of any books and papers deemed relevant or material to an investigation; examine, copy, or remove GDC documents or records; interview officers and employees of the GDC; monitor the implementation of any inspector general recommendations; and perform any other functions that are necessary or appropriate.

All meetings of the GDC are required to be open to the public and members of the news media, except for when the GDC meets in executive session. The bill provides for specific exceptions to the requirement that the meeting be open to the public. Meeting agendas are required to be made available to the public at least 72 hours before a meeting and public notice of the time and place of the meeting is required to be provided to media outlets and conspicuously posted in designated areas and on the GDC’s website at least five days before the meeting. The public is reserved at least 30 minutes at each board meeting to speak on any topic on an agenda. The GDC is required to keep reasonably comprehensible minutes of all meetings and to make those minutes available on its website within two weeks from the date of the meeting. The GDC is required to make all reasonable efforts to ensure that meetings are
held in facilities that permit barrier-free physical access to people with disabilities. The bill subjects the GDC to the New York freedom of information law for requests filed in New York and to the New Jersey open public records law for requests filed in New Jersey. The GDC is required to appear before a committee of the legislative houses of each state upon request from that house’s presiding officer. Each legislative house is entitled to require two such appearances in each calendar year. The bill specifies which officers are required to appear, unless otherwise agreed to by the presiding officer of the legislative house making the request.

Duties of the GDC

The duties of the GDC are to: (1) make appropriate application for, and act as a coordinating, distributing, or recipient agency for funding and authorizations necessary or appropriate to facilitate the Gateway Program; (2) serve as the lead agency responsible for cooperating with various entities to facilitate the Gateway Program; (3) adopt bylaws and make appropriate orders to carry out and discharge its powers, duties, and functions; (4) expend funds and hold and prudently invest funds; (5) recommend appropriate federal, state, and local government legislation and agency administrative action pertaining to the Gateway Program; (6) prepare a report with details on the progress on GDC activities and information on the financial and construction plan for the following two fiscal years, which is subject to approval by the two legislatures; and (7) take any other action as may be necessary or appropriate to further the purposes of the GDC.

Powers of the GDC

The powers of the GDC are to: (1) facilitate the Gateway Program through contracts and agreements and other documents and instruments, provided that the GDC complies with workers compensation, prevailing wage, and other labor laws in each respective state; (2) sue and be sued; (3) accept and expend funds; (4) acquire property, including by condemnation, and, solely in furtherance of the purposes of the GDC, manage that property and develop undeveloped property necessary or appropriate to facilitate the Gateway Program; (5) make, procure, enter into, execute, and deliver contracts; (6) make applications for and accept funding, permits, authorizations, and approvals as may be necessary to facilitate the Gateway Program; (7) enter into agreements with a private entity or entities to facilitate the Gateway Program; (8) adopt its own public procurement rules and guidelines; (9) coordinate with entities from each or both states to issue or guarantee bonds, notes, or other evidence of indebtedness, enter into loan agreements and otherwise borrow funds, or incur
indebtedness; (10) acquire and hold securities for investment purposes; (11) appoint officers and employees; (12) obtain insurance; (13) cooperate with governmental entities or private entities; (14) indemnify individuals and entities to the extent required to facilitate the Gateway Program; (15) establish or acquire subsidiaries as required to facilitate the Gateway Program; (16) utilize the existing labor force in the states and foster labor harmony in allowing for adoption of efficient labor work rules and practices during construction of the Gateway Program; and (17) exercise all other powers as may be necessary or appropriate.

Financial reporting and audit and financial statements

The bill requires the GDC to publish a comprehensive annual financial report to be submitted annually to the governors and state legislatures within 120 days of the end of the GDC’s fiscal year. The annual report is required to include the GDC’s financial statements, statistical and other regional data, a narrative of the GDC’s activities during the year, and other information.

The GDC is required to prepare financial statements on an annual basis in accordance with generally accepted accounting principles and the accounting standards issued by the governmental accounting standards board. The bill requires the financial statements to be audited by an independent firm of certified public accountants and establishes requirements concerning the financial audit.

Contracting

The bill establishes requirements for contracts for the GDC, which include requirements for specifications, grounds for cancellation of a contract, disqualification to contract with the GDC, removal of disqualification of public contractors by petition, a statement of non-collusion to be included in bids and proposals, and requirements concerning minority-owned and women-owned businesses and New York and New Jersey business enterprises. The bill also subjects the GDC contracts to approval by each state’s comptroller in accordance with the powers provided to each respective state comptroller pursuant to state law.

Subsidiaries

No less than 60 days prior to the formation of a subsidiary, the GDC is required to provide notice to the governor of each state and certain members of each state’s legislatures. The creation of a subsidiary corporation is subject to approval by the board. Within 60 days of the effective date of the bill, and on or before the first day of January of each year annually thereafter, any
subsidiary corporation, in cooperation with the GDC, is required to provide to the governor and legislature of each state a report on the subsidiary corporation containing information required under the bill.

Sixty days prior to the issuance of any debt by the subsidiary, or the GDC on behalf of the subsidiary, the GDC is required to provide notice to the same individuals required to receive notice for the formation of a subsidiary.

Property disposition

The bill provides certain requirements for the disposition of property owned by the GDC. Any sale of real property is to be undertaken and conducted pursuant to the provisions of the existing laws governing the sale of real property in the state in which the real property is located and by approval of the board.

The GDC is not permitted to dispose of real property unless an appraisal of the value of the real property has been made by an independent appraiser and the appraisal is included in the record of the transaction.

The GDC is not permitted to sell, lease, or otherwise alienate property for less than fair market value unless: the transferee is a government entity or other public entity and the terms and conditions of the transfer require that the ownership and use of the real property will remain with the government or any other public entity; or the purpose of the transfer is within the purpose, mission, or governing statute of the GDC and a written determination is made by the board that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose, prior to board approval of the transfer.

The bill requires the board to adopt rules and regulations concerning disposition, acquisition, and transfer of real property or any interest in real property which, at a minimum, includes a requirement that certain information be made available to the board at the meeting where approval is scheduled.

Not less than 10 days in advance of any meeting of the board at which the board is to consider an action to authorize the sale of real property, the chief executive officer is required to provide public notice of the proposed action along with relevant material terms and provisions of the sale by posting the information on the GDC’s website.

The chief executive officer may authorize or arrange for contracts for the sale of personal property owned by the GDC upon terms and conditions as the chief executive officer deems proper and execute the contract on behalf of the GDC where the value of the personal property is not in excess of $1,000,000; provided, however, that personal property valued at more than $250,000 is not to be sold under the authority of the chief executive officer other
than to the highest bidder after public advertisement. Where the
time value of the personal property is in excess of $1,000,000, the sale of
the property is dependent on authorization by the board.

Exemption from taxes and other laws

The bill provides that the GDC is not required to pay taxes or
assessments of any character levied by either state or any local
government upon any property used by the GDC, its agents, or its
contractors for facilitation of the Gateway Program or any income
or revenue therefrom.

The bill requires the GDC to, as a matter of policy, conform to
various laws in regard to the construction and maintenance of the
Gateway Program and in regard to health and fire protection to the
extent that the GDC finds doing so is practicable.

Consent to suit

The state of New York and state of New Jersey consent to suits,
actions, or proceedings against the GDC except as specifically
provided in the bill. The consent does not apply to: (1) causes of
action accruing before the effective date of the bill; (2) causes of
action arising out of any contract entered into or assumed by or
assigned to the GDC before the effective date of the bill; (3) civil
suits, actions, or proceedings for the recovery of statutory penalties;
and (4) suits, actions, or proceedings for judgments, orders, or
decrees restraining, enjoining, or preventing the GDC from
committing or continuing to commit any acts, except for suits
brought by each state’s Attorney General.

The GDC is declared immune from liability in the state of New
Jersey in the same manner that the state itself is immune from
liability under the “New Jersey Tort Claims Act” and “New Jersey
Contractual Liability Act.”

Dissolution

The GDC is required to dissolve on the first day of the 36th
month following the completion of the Gateway Program, provided
that plans have been adopted for the transfer of the component
projects and repayment of or arrangement for the full repayment of
any bonds or other securities or other debt incurred for Gateway
Program purposes without the impairment of the creditworthiness of
either state and that any entity receiving a component project enter
into an agreement concerning responsibility for the maintenance
and upkeep of the relevant component project. The bill provides
that Amtrak may not be unduly prejudiced by the dissolution.

The bill authorizes the governors of both states to jointly
determine that dissolution of the GDC on the required date is
impractical and to extend the dissolution for one year to the first
day of the 48th month following completion of the Gateway
Program in order to resolve any issues concerning transfer of
component projects, resolution of outstanding debt, or to remedy
any undue prejudice to Amtrak. The bill provides that the GDC is
prohibited from remaining in existence beyond the first day of the
48th month following completion of the Gateway Program.

**Amendment to the agreement**

The bill provides that the states may amend the agreement
through the action of one legislature concurred in by the legislature
of the other state.

**New Jersey commissioners**

The bill provides that the three commissioners from New Jersey
are to serve at the pleasure of the Governor. Of the three
commissioners, one is appointed by the Governor, one is appointed
by the Governor upon recommendation of the Speaker of the
General Assembly, and one is appointed by the Governor upon the
recommendation of the Senate President. All vacancies in the
office of commissioner are to be filled in the same manner as the
original appointment. Each New Jersey commissioner may be
removed from office through the adoption of articles of
impeachment by the General Assembly which are delivered to the
Senate and following a trial and vote by the Senate on those articles
of impeachment.

**Condemnation power**

The bill provides that the power of eminent domain may be
utilized for Gateway Program purposes by the Commissioner of
Transportation, contingent upon the Commissioner of
Transportation entering into an agreement addressing the
acquisition with the GDC.