

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 3918

STATE OF NEW JERSEY
218th LEGISLATURE

ADOPTED JUNE 17, 2019

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

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District 21 (Morris, Somerset and Union)

Co-Sponsored by:

Senator Lagana

SYNOPSIS

Establishes Gateway Development Commission with certain powers and responsibilities.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Budget and Appropriations Committee.



1 **AN ACT** establishing the Gateway Development Commission,
2 supplementing Title 32 of the Revised Statutes, and amending
3 P.L.1966, c.301.
4

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

7
8 1. (New section) Short title. This act shall be known and may
9 be cited as the "Gateway Development Commission Act."
10

11 2. (New section) Gateway Development Commission.

12 a. Legislative findings and intent. The Legislature finds and
13 declares that: the state of New Jersey and the state of New York and
14 their respective citizens share a common concern to preserve the
15 functionality and strengthen the resiliency of long-distance and
16 commuter rail infrastructure between New Jersey and New York,
17 including passenger rail infrastructure owned, controlled, or utilized
18 by the National Railroad Passenger Corporation, also known as
19 "Amtrak"; the two states and their respective citizens share the
20 benefits of existing interstate passenger rail infrastructure between
21 the two states, including the existing North River Tunnels; interstate
22 passenger rail service and infrastructure is vital to the economies of
23 New Jersey and New York; that, because of the passage of time and
24 damage caused by natural disasters, both states recognize the
25 existing interstate passenger rail infrastructure, including the
26 existing North River Tunnels, is at risk of system failures that could
27 result in prolonged service disruptions that would severely damage
28 the economies of the two states and many other participants in the
29 economy of the Northeast Corridor; both states recognize the urgent
30 need to undertake projects necessary to create passenger rail
31 capacity under the Hudson River, rehabilitate passenger rail
32 infrastructure, maintain current levels of long-distance and
33 commuter rail service between the two states and provide additional
34 reliability, safety and security; the citizens of both states will share
35 the benefits of expanded capacity and rehabilitated passenger rail
36 infrastructure between the two states; and there has been a long
37 history of cooperation among state and local governmental entities,
38 Amtrak, and various private organizations and individuals in the
39 two states to ensure the preservation of a variety of passenger rail
40 service options.

41 b. The legislature therefore determines that there is a need to
42 endorse and formalize that bi-state cooperative effort to help ensure
43 that the functionality of long-distance and commuter rail
44 infrastructure between New Jersey and New York and thence
45 throughout the Northeast Corridor, is preserved and maintained for

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.

1 the benefit of the economy of New Jersey and New York and for the
2 well-being of present and future generations of citizens in both
3 states; and that the creation of a bi-state commission that shall be a
4 body corporate and politic established by the state of New Jersey
5 and the state of New York, acting in the public interest and
6 exercising essential governmental functions, is an appropriate
7 means to accomplish these very important goals and is not intended
8 to impair, limit, diminish, or otherwise affect any right, power, or
9 jurisdiction of the United States of America or any department,
10 branch, agency, court, bureau, or other instrumentality thereof with
11 respect to any matter, or grant or confer any right or power on such
12 bi-state commission, or any officer or trustee thereof, to regulate
13 commerce between the states.

14 c. It is the intention of the legislature that the commission so
15 created constitute an institution which has been established by the
16 states to effectuate a public purpose and is therefore eligible to
17 apply for financial assistance from the United States government,
18 including the agencies thereof.

19

20 3. (New section) Definitions.

21 Except where different meanings are expressly specified in
22 subsequent provisions of this section, the following terms shall have
23 the following meanings:

24 "Act" means the Gateway Development Commission act.

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

28 "Board" means the board of commissioners of the commission.

29 "Commission" shall mean the gateway development commission
30 which is established pursuant to this act.

31 "Facilitate" means the planning, designing, financing,
32 acquisition, development, redevelopment, expansion, construction,
33 reconstruction, replacement, approval of works, lease, leaseback,
34 licensing, consigning, asset management, optimization,
35 rehabilitation, repair, alteration, improvement, extension,
36 management, ownership, use and effectuation of the matters
37 described in this act. "Facilitation" shall have a concomitant
38 meaning.

39 "Full Funding" means the sum of commitments to fund, from
40 sources deemed by the Commission to be creditworthy, plus
41 Commission cash-on-hand, plus any institution of a tariff or an
42 agreement to impose user fees not subject to further approvals (if
43 any), plus such other sources of funding deemed certain to be
44 available as and when required, found by the Commission to be
45 sufficient to facilitate the project or a discrete component thereof
46 which is beneficial to the public.

47 "Meeting" means any gathering, whether corporeal or by means
48 of communication equipment, which is attended by, or open to, the

1 Board, held with the intent, on the part of the commissioners
2 present, to act as a unit upon the specific public business of the
3 Commission. "Meeting" does not mean a gathering (i) attended by
4 less than a quorum of commissioners; (ii) in which the board is
5 engaged in ordinary course supervision of Commission staff; (iii) in
6 which consideration of Commission business matters are informally
7 discussed without the intent or effect of effectuating any action of
8 the Commission; or (iv) attended by or open to all the members of
9 three or more similar public bodies at a convention or similar
10 gathering.

11 "Project" means a passenger rail transportation project between
12 Penn Station, Newark, New Jersey and Penn Station, New York,
13 New York currently referred to as the "Gateway Program"
14 consisting of:

15 phase one of the Project including: the replacement of the
16 existing Portal Bridge; the construction of a tunnel connecting the
17 states of New York and New Jersey and the completion of certain
18 ancillary facilities including construction of concrete casing at
19 Hudson Yards in Manhattan, New York; the rehabilitation of the
20 existing North River Tunnels; all Projects necessary to connect the
21 aforesaid Projects to the contiguous Amtrak Northeast Corridor
22 Facilities; and

23 phase two of the Project including: the Portal South Bridge
24 Project; the Sawtooth Bridge replacement Project; the Secaucus
25 Loop Project; the Secaucus Junction renovation and expansion
26 Project; and the Penn Station South Project, and other related
27 Projects, but only if such phase two projects are authorized pursuant
28 to a memorandum of understanding between the Governor of New
29 York, the Governor of New Jersey and Amtrak.

30 "Public business" means matters which relate in any way,
31 directly or indirectly, to the performance of the functions of the
32 Commission or the conduct of its business.

33

34 4. (New section) Creation of the Commission; purposes.

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

42 (1) Facilitate the Project;

43 (2) Coordinate activities of governmental entities, Amtrak, and
44 private entities providing assistance to the Project or otherwise
45 regulating the Project, with a view to achieving full funding, and
46 encourage and enable such parties to participate in the effectuation
47 of the Project;

1 (3) act as a coordinating agency to arrange for cooperation
2 among the federal government, the state of New Jersey, any local
3 government thereof, the state of New York, any local government
4 thereof, any agency, instrumentality, department, commission, or
5 authority of any one or more of the foregoing, any bi-state agency,
6 Amtrak, any individual or private firm, entity or corporation, or
7 with any one or more of them (including by contract among the
8 parties), for and in connection with the Facilitation of the Project
9 for any of the purposes of this act, and to enter into an agreement or
10 agreements (and from time to time to enter into agreements
11 amending or supplementing the same) with the federal government,
12 the state of New Jersey, any local government thereof, the state of
13 New York, any local government thereof, any agency,
14 instrumentality, department, commission, or authority of any one or
15 more of the foregoing, any bi-state agency, Amtrak, any individual
16 or private firm, entity or corporation, or with any one or more of
17 them, for or relating to such purposes, including but not limited to
18 agreements with respect to financial assistance, loans, grants or any
19 other funding as may be available for the Project. The Commission
20 is hereby intended to qualify for, authorized, and empowered to
21 apply for and accept, financial assistance, loans, grants, or any other
22 funding for such purposes under federal, state, or local laws, and to
23 make application directly to the appropriate officials or agencies for
24 the application for and receipt of federal, state or local assistance,
25 loans, grants or any other funding in aid of any of the purposes of
26 this act;

27 (4) pursue efforts to assist federal or state agencies and other
28 entities to fulfill their goals set forth in federal law or the laws of
29 New York or New Jersey to further passenger rail transportation
30 between states including 49 U.S.C. s.24901 et seq.;

31 (5) take any and all actions authorized by this act which are or
32 may be necessary or appropriate to constitute and maintain itself as
33 an applicant eligible to qualify to apply for and be awarded
34 financial assistance, loans, grants or other funding as may be
35 available for the Project, including that awarded by federal, state,
36 and local governments and the agencies thereof; and

37 (6) facilitate the Project by making and enforcing such rules and
38 regulations; and

39 (a) accepting, collecting, and receiving funds pursuant to the
40 provisions of the memorandum of understanding established
41 pursuant to section 20 of this act, which may include bonded
42 revenues, state appropriations, dedicated revenues, and any other
43 funds or revenues made available pursuant to that memorandum of
44 understanding, and using those funds to provide for the financing,
45 construction or asset management of the project and the payment of,
46 with interest upon, and the amortization and retirement of bonds or
47 other securities or obligations issued or insured for Project
48 purposes, including establishment of prudent reserves, in the same

1 manner that all funds or revenues included in the memorandum of
2 understanding established pursuant to section 20 of this act may be
3 used for such purposes; and

4 (b) establishing, levying, and collecting tolls and fees payable
5 by entities using the Project or any portion thereof, as it may deem
6 necessary or appropriate, provided that any such tolls or fees:

7 (i) shall not be established at a rate greater than the amount
8 determined by the commission to be necessary to meet the expenses
9 of the financing, construction, or asset management of the Project,
10 including the establishment of prudent reserves;

11 (ii) shall be approved by an affirmative vote of the board, in
12 accordance with the voting requirements provided pursuant to this
13 act, at a meeting duly noticed and held, provided that the
14 commission has complied with subparagraph (d) of this paragraph;

15 (iii) may be used to provide for the payment of, with interest
16 upon, and the amortization and retirement of bonds or other
17 securities or obligations issued or insured for Project purposes,
18 including establishment of prudent reserves, in the same manner
19 that all funds or revenues included in the memorandum of
20 understanding established pursuant to section 20 of this act may be
21 used for such purposes;

22 (iv) shall not conflict with applicable federal law and the laws of
23 the state of New York and the state of New Jersey; and

24 (v) that may be directly or indirectly levied or imposed on or
25 payable by the New Jersey Transit Corporation shall be expressly
26 and specifically authorized pursuant to the memorandum of
27 understanding established pursuant to section 20 of this act, or any
28 amendment thereto, and that the revenue from any toll or fee shall
29 count toward the state share of funding pursuant to the
30 memorandum of understanding.

31 (c) The power of the commission to establish, levy, or collect
32 tolls or fees that are payable by the New Jersey Transit Corporation
33 shall be narrowly construed.

34 (d) Not less than thirty days and not more than ninety days prior
35 to any vote or action taken by the board to establish, levy, or collect
36 a toll or fee imposed by the commission or relating to any increase
37 in a toll or fee, the commission shall conduct at least three public
38 hearings in the manner prescribed as follows:

39 (i) Locations for public hearings shall be selected in such a way
40 as to be geographically accessible to a majority of users of the
41 facility or facilities to be impacted by the toll or fee, provided that
42 at least one hearing shall be held in each state.

43 (ii) At least seventy-two hours before the first hearing held
44 pursuant to this section, the commission shall make the following
45 information available to the public, including posting on the
46 commission's official website:

47 (A) a written explanation of why the toll or fee, or any increase
48 in a toll or fee, is necessary;

1 (B) the amount of revenue expected to be generated from the
2 establishment of or increase in the toll or fee; and

3 (C) a detailed explanation of how the revenues raised from the
4 establishment of or increase in the toll or fee is expected to be
5 spent.

6 (iii) Each hearing shall be attended by at least two
7 commissioners from New York and two commissioners from New
8 Jersey in office at the time of the hearing.

9 (iv) The commission shall hold no more than one public hearing
10 in a single day, and each public hearing shall be scheduled to begin
11 after 6:30 p.m., eastern standard time, on a weekday.

12 (v) The commission shall ensure that each of the requirements
13 set forth in this paragraph shall be complied with before placing on
14 the meeting agenda of the board any item or matter establishing,
15 levying, or collecting a toll or fee or relating to an increase in any
16 toll or fee.

17 b. Officers. The officers of the Commission shall include a
18 chief executive officer, a general counsel, a chief financial officer, a
19 chief ethics and compliance officer, and inspector general whom
20 shall be appointed by the Commission. Such officers shall not be
21 required to be established until the Commission is in receipt of
22 necessary federal funding for purposes of facilitating the Project.

23

24 5. (New section) Board of commissioners.

25 a. The Commission shall consist of seven commissioners: three
26 from the state of New York, three from the state of New Jersey, and
27 one directly appointed by Amtrak. The commissioner appointed by
28 Amtrak shall serve to represent Amtrak's interest, as owner-operator
29 or user of the Northeast Corridor, in the work to be undertaken by
30 the Commission. The New York commissioners shall be appointed
31 by the state of New York and the New Jersey commissioners shall
32 be appointed by the state of New Jersey in the manner determined
33 pursuant to the laws of each respective state. Any commissioner
34 appointed to the board shall have experience in one or more of the
35 following areas: transportation, public administration, business
36 management, finance, accounting, law, engineering, land use, urban
37 and regional planning, management of large capital projects, labor
38 relations, or have experience in some other area of activity central
39 to the mission of the Commission.

40 b. The term of each commissioner shall be three years. Each
41 commissioner may be reappointed pursuant to the laws of the state
42 from which the commissioner is appointed or, for the Amtrak
43 appointee, pursuant to any rule or policy adopted by Amtrak. A
44 commissioner may automatically continue to serve following the
45 expiration of that commissioner's term until a successor is
46 appointed and seated unless such action is prohibited by the laws of
47 each respective state or, for the Amtrak appointee, any rule or
48 policy adopted by Amtrak.

- 1 c. The governor of New York, governor of New Jersey, and
2 Amtrak may remove a commissioner appointed by such office or
3 entity for inefficiency, neglect of duty, or misconduct in office after
4 giving him or her a copy of the charges against him or her and an
5 opportunity to be heard, in person or by counsel in his or her
6 defense, upon not less than ten days' notice.
- 7 d. At the conclusion of a commissioner's term, the
8 commissioner may be reappointed for a successive three year term
9 at the pleasure of the party who originally appointed that
10 commissioner.
- 11 e. In the event that a commissioner ceases to serve before the
12 stated expiration of the commissioner's term, the party that
13 originally appointed the commissioner may appoint a replacement
14 to serve out the remainder of the replaced commissioner's term and
15 thereafter, the vacancy shall be filled as provided for in subsection
16 a. of this section.
- 17 f. Commissioners shall serve without compensation, but the
18 Commission may, within the limits of funds appropriated or
19 otherwise made available to it, reimburse commissioners for actual
20 expenses necessarily incurred in the discharge of their official
21 duties.
- 22 g. The commissioners from the state of New Jersey and the
23 commissioners from the state of New York shall be indemnified by
24 the state of New Jersey and the state of New York, respectively, to
25 the same extent as such state indemnifies a public officer for any
26 claim or judgment arising out of such public officer's official duties.
- 27 h. No commissioner, including a co-chairperson, shall serve as
28 any other officer or employee of the Commission while serving as a
29 commissioner.
- 30 i. Oath of Office. The commissioners shall promulgate a
31 commissioner's oath of office in consultation with the chief ethics
32 and compliance officer within ninety days of the effective date of
33 this act. Each commissioner and officer shall also, before entering
34 upon the duties of his or her office, take and subscribe the
35 constitutional oath of office, consistent with the constitutions of
36 both states where practicable, which shall be promulgated within
37 ninety days of the effective date of this act. The oaths of office shall
38 be filed in the office of the Commission within ninety days of such
39 commissioner or officer taking office or ninety days after any such
40 oath of office is promulgated if such promulgation has not occurred.
- 41 j. Commissioner Statement. At the time that a commissioner
42 takes and subscribes the commissioner's oath of office, the
43 commissioner shall execute a statement declaring that the
44 commissioner understands the commissioner's independence and
45 fiduciary obligation to perform duties and responsibilities to the
46 best of the commissioner's abilities, in good faith and with proper
47 diligence and care which an ordinarily prudent person in like
48 position would use under similar circumstances and may take into

1 consideration the views and policies of any elected officials or
2 bodies and ultimately apply independent judgment in the best
3 interest of the Commission, its mission, and the public, consistent
4 with this enabling statute, mission, and by-laws of the Commission;
5 and that the fiduciary duty to the Commission is derived from and
6 governed by its mission.

7 k. Board Training. Individuals appointed to the board shall
8 participate in training approved by the chief ethics and compliance
9 officer regarding their legal, fiduciary, financial and ethical
10 responsibilities as commissioners of the Commission within six
11 months of appointment to the Commission. The commissioners
12 shall participate in continuing training as may be required to remain
13 informed of best practices, regulatory and statutory changes relating
14 to the effective oversight of the management and financial activities
15 of commissions or public authorities and adhere to the highest
16 standards of responsible governance.

17 l. Recusals.

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

29 (2) For the purposes of this paragraph:

30 "Immediate family" means a spouse, parent, child, or sibling.

31 "Interest" means: if the business organization is a partnership,
32 the commissioner's immediate family is a partner or owner of ten
33 percent or more of the assets of the partnership; or if the business
34 organization is a corporation, the commissioner's immediate family
35 owns or controls ten percent or more of the stock of the corporation,
36 or serves as a director or officer of the corporation.

37 m. Financial Disclosure.

38 (1) Notwithstanding any provision of law to the contrary, the
39 commissioners, officers, and employees of the Commission shall
40 file annual financial disclosure statements as provided in this
41 paragraph.

42 (2)(a) The commissioners appointed by the state of New York
43 pursuant to this act shall file annual financial disclosure statements
44 pursuant to section 73-a of the public officers law.

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

1 (c) The commissioners appointed by Amtrak shall file annual
2 financial disclosure statements consistent with laws, rules,
3 regulations, and policies associated with filings of financial
4 disclosures by Amtrak employees and officers.

5 (d) Financial disclosures of officers and employees shall, at a
6 minimum, be required of officers and employees who hold policy-
7 making positions as determined by the commission, and officers
8 and employees whose base salary, either in the current or previous
9 year, exceeds \$150,000, which shall be adjusted for inflation
10 annually in accordance with the consumer price index for all urban
11 wage earners and clerical workers (CPI-W) as calculated by the
12 federal government.

13
14 6. (New section) Organization of the Commission; meetings.

15 a. The co-chairpersons of the commission shall serve from
16 among the commissioners appointed by the state of New Jersey and
17 the commissioners appointed by the state of New York and shall
18 include one co-chairperson from New Jersey and one co-
19 chairperson from New York. The commissioner who shall serve as
20 co-chairperson from each state shall be decided in accordance with
21 the laws of each respective state or if the respective state has no
22 laws related to the selection of a co-chairperson then as elected by
23 the commissioners appointed from each respective state.

24 b. The commission shall meet regularly as it may determine.
25 Meetings shall be held at such times and places as the co-
26 chairpersons of the commission deem appropriate. To the maximum
27 extent practicable, meetings shall be held on an alternating basis in
28 New Jersey and New York.

29 c. The powers of the Commission may be exercised by the
30 commissioners at a meeting duly called and held where at least two
31 New York commissioners, two New Jersey commissioners, and the
32 Amtrak commissioner are present. Action may be taken and
33 motions and resolutions adopted by the Commission at any meeting
34 thereof by the affirmative vote of at least two New York
35 commissioners, two New Jersey commissioners, and the Amtrak
36 commissioner. The commissioners shall adopt bylaws providing for
37 attendance protocols, voting procedures, and other matters related
38 to the conduct of the business of the Commission, including
39 designating officers of the Commission.

40 d. The Commission may request the assistance and services of
41 such employees and agents as it may require and as may be made
42 available to it for the purpose of carrying out its duties under this
43 act, which agents may include private consultants and persons
44 employed by or acting as a consultant for the federal government,
45 the state of New Jersey, any local government thereof, the state of
46 New York, any local government thereof, any agency,
47 instrumentality, department, commission or authority of any one or
48 more of the foregoing, any bi-state agency, or of Amtrak, and each

1 such government and enumerated party is authorized to provide any
2 such assistance and services to the Commission.

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

8 f. The Commission shall:

9 (1) adopt a mission statement that shall include facilitating and
10 completing the Project;

11 (2) adopt a code of conduct applicable to commissioners,
12 officers, employees, and vendors and other contractors with the
13 Commission that shall, at minimum, include applicable standards
14 established by law in each state;

15 (3) no later than January thirtieth, two thousand twenty,
16 establish a whistleblower access and assistance program protecting
17 employees from retaliation for disclosing information concerning
18 acts of wrongdoing, misconduct, malfeasance, or other
19 inappropriate conduct based upon the recommendations of the chief
20 ethics and compliance officer;

21 (4) establish a policy requiring all commissioners, officers, and
22 employees with decision-making authority to maintain records
23 regarding contact with lobbyists. As used in this paragraph,
24 "contact" means any conversation, in person or by telephonic or
25 other electronic means, or correspondence between any lobbyist
26 engaged in the act of lobbying and any person within the
27 Commission who can make or influence a decision on the subject of
28 the lobbying on the behalf of the Commission, and shall include, at
29 a minimum, all members of the board and all officers of the
30 Commission, "lobbyist" shall have the same meaning as defined in
31 the laws or, rules or regulations of either state, and "lobbying" shall
32 mean and include any attempt to influence: the adoption or rejection
33 of any rule or regulation having the force and effect of law by the
34 Commission, the outcome of any proceeding by the Commission to
35 establish, levy or collect fees, tolls, charges or fares, the
36 authorization, approval or award of any agreements, contracts or
37 purchase orders valued at \$500,000 or more; and

38 (5) have an efficiency study of the Commission and its
39 operations conducted by an independent entity upon the request of
40 the governors of New York and New Jersey, and if no request is
41 made, no longer than every five years from initiation of Project
42 construction.

43 g. Whistleblower Program.

44 (1) The chief ethics and compliance officer shall recommend to
45 the board a whistleblower access and assistance program to be
46 administered by the inspector general that shall include, but not be
47 limited to:

1 (a) establishing an email address and toll-free telephone,
2 facsimile, and text messaging lines available to employees;

3 (b) offering advice regarding employee rights under applicable
4 state and federal laws and advice and options available to all
5 persons; and

6 (c) offering an opportunity for employees to identify concerns
7 regarding any issue at the Commission.

8 (2) Any communication between an employee and the inspector
9 general pursuant to this subsection shall be held strictly confidential
10 by the inspector general, unless the employee specifically waives in
11 writing the right to confidentiality, except that such confidentiality
12 shall not exempt the inspector general from disclosing such
13 information, where appropriate, to the board and/or any law
14 enforcement authority.

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

19 (4) As used in this subsection:

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

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

31 h. Inspector General.

32 (1) The inspector general shall be responsible for receiving and
33 investigating, where appropriate, all complaints regarding fraud,
34 waste, and abuse by commissioners, officers, and employees or
35 third-parties doing business with the Commission. The inspector
36 general shall also be responsible for conducting investigations upon
37 the inspector general's own initiative, as the inspector general shall
38 deem appropriate.

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

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

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

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

8 (a) administer oaths or affirmations and examine witnesses
9 under oath;

10 (b) require the production of any books and papers deemed
11 relevant or material to any investigation, examination, or review;

12 (c) notwithstanding any law to the contrary, examine and copy
13 or remove documents or records of any kind prepared, maintained,
14 or held by the Commission and its subsidiaries;

15 (d) interview any officer or employee of the Commission or its
16 subsidiaries on any matter related to the performance of such officer
17 or employee's official duties. To the extent that the terms and
18 conditions of employment of any employee are established by
19 collective negotiations, any interview conducted pursuant to this
20 paragraph must be in accordance with any applicable provisions of
21 the current, or most recent, if expired, collective negotiations
22 agreement covering the terms and conditions of employment of the
23 employee;

24 (e) monitor the implementation by the Commission of any
25 recommendations made by the inspector general; and

26 (f) perform any other functions that are necessary or appropriate
27 to fulfill the duties and responsibilities of office.

28 i. Open Meetings.

29 (1) All meetings of the Commission shall be open to the public
30 and members of the news media, individually and collectively, for
31 the purpose of observing the full details of all phases of the
32 deliberation, policy-making, and decision-making of the board,
33 except for an executive session initiated upon a majority vote taken
34 in an open meeting pursuant to a motion. Such motion shall identify
35 the general nature of the subjects to be considered in the closed,
36 executive session and, if it is not to take place immediately, state, as
37 closely as possible the time and circumstances for such session and
38 when the matters discussed or acted upon may be disclosed. The
39 board may exclude the public only from that portion of a meeting at
40 which the board discusses any:

41 (a) matter in which the release of information would impair a
42 right to receive funds from the government of the United States;

43 (b) material the disclosure of which would constitute an
44 unwarranted invasion of individual or personal privacy;

45 (c) collective bargaining agreement, or the terms and conditions
46 which are proposed for inclusion in any collective bargaining
47 agreement, including the negotiation of the terms and conditions

1 thereof with employees or representatives of employees of the
2 Commission;

3 (d) matter involving the purchase, lease, or acquisition of real
4 property with Commission funds, the proposed acquisition of
5 securities, the sale or exchange of securities held by the
6 Commission, or the investment of Commission funds, if public
7 discussion of the matter would adversely affect the public interest;

8 (e) matter which would imperil the public safety if disclosed;

9 (f) pending or anticipated litigation or contract negotiation in
10 which the Commission is, or may become, a party, or matters
11 falling within the attorney-client privilege, to the extent that
12 confidentiality is required for the attorney to exercise the attorney's
13 ethical duties as a lawyer;

14 (g) contract negotiations disclosure of which would imperil the
15 Commission's position or an outcome in the best interest of the
16 Commission, its mission, and the public;

17 (h) matter involving the employment, appointment, termination
18 of employment, terms and conditions of employment, evaluation of
19 the performance of, promotion or disciplining of any specific
20 prospective officer or employee or current officer or employee
21 employed or appointed by the Commission, unless all the individual
22 employees or appointees whose rights could be adversely affected
23 request in writing that the matter or matters be discussed at a public
24 meeting;

25 (i) deliberation of the Commission occurring after a public
26 hearing that may result in the imposition of a specific civil penalty
27 upon the responding party or the suspension or loss of a license or
28 permit belonging to the responding party as a result of an act or
29 omission for which the responding party bears responsibility; or

30 (j) information relating to current or future investigation or
31 prosecution of a criminal offense which would imperil effective law
32 enforcement if disclosed;

33 (2) The Commission shall make meeting agendas available to
34 the public at least seventy-two hours before each meeting of the
35 board and each meeting of any committee. Public notice of the time
36 and place of a meeting shall be provided to appropriate media
37 outlets, shall be conspicuously posted in one or more designated
38 areas, and shall be conspicuously posted via the Commission's
39 official website at least five business days before the meeting.

40 (3) The Commission shall make available to the public
41 documents in the following manner: the agenda and public
42 documents pertaining to a board meeting shall be available for
43 public inspection at least 72 hours before each meeting or as soon
44 as practicable at an office of the Commission; and the agenda and
45 public documents pertaining to a board or committee meeting shall
46 be posted on the Commission's website.

47 (4) At each public meeting of the Commission, the public shall
48 be allotted thirty minutes, or a reasonable time as determined by the

1 Commission, in order to allow any persons in attendance an
2 opportunity to comment on any topic on the agenda.

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

13 (6) Attendance at an executive session shall be permitted to any
14 member of the Commission and any other persons authorized by the
15 Commission.

16 (7) The Commission shall adopt and promulgate appropriate
17 bylaws, rules, or regulations concerning the rights of the public to
18 be present at meetings of the Commission. Any rules, regulations,
19 or bylaws adopted hereunder shall become part of the minutes of
20 the Commission and be posted on the Commission's website.

21 j. Meeting Notice. The board shall, within six months of the
22 effective date of this act, adopt appropriate policies concerning
23 proper notice to the public and the news media of its meetings and
24 the right of the public and the news media to be present at meetings
25 of the Commission. The board may incorporate in its policies
26 conditions under which it may exclude the public from a meeting or
27 a portion thereof consistent with this act.

28 k. Freedom of Information.

29 (1) The Commission shall be deemed an "agency" and treated as
30 such under the laws of New York, for all purposes under articles 6
31 and 6-A of the public officers law, and shall be deemed a "public
32 agency" and treated as such under New Jersey, P.L.1963, c.73
33 (C.47:1A-1 et seq.), pertaining to the disclosure of government
34 records.

35 (2) When there is an inconsistency between the law of the state
36 of New York and the law of the state of New Jersey, the law of the
37 state that provided the greatest rights of access shall apply.

38 (3) The provisions of article 78 of the civil practice law and
39 rules of the state of New York or P.L.1963, c.73 (C.47:1A-1 et
40 seq.), of the laws of New Jersey, as applicable, shall apply to
41 enforce the provisions of this act.

42 (4) The Commission shall adopt and promulgate appropriate
43 bylaws, rules, or regulations concerning the rights of the public to
44 obtain records of the commissioner's activities or public business.
45 Any rules, regulations, or bylaws adopted hereunder shall become
46 part of the minutes of the Commission and be posted on the
47 Commission's website.

48 l. Legislative hearings.

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

12 (2) The Assembly or Senate of the New York state legislature or
13 the General Assembly or Senate of the New Jersey legislature may
14 request attendance at such hearing of any named officer of the
15 Commission.

16

17 7. (New section) Duties of the Commission.

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

22 a. Make appropriate application for, and act as a coordinating,
23 distributing, or recipient agency for, federal, state, or private
24 funding and authorizations necessary or appropriate to Facilitate the
25 Project;

26 b. Cooperate with other agencies or authorities or departments
27 (federal, state, local, and bi-state), Amtrak, and private parties to
28 Facilitate the Project, including entering into agreements specifying
29 a party's rights and obligations with respect to the Project, to create
30 a Project capable of achieving long-term stability and Full Funding,
31 without obligating the full faith and credit of the federal
32 government, either state or any local government thereof, or any
33 other party, except as explicitly authorized by any party empowered
34 by law to do so;

35 c. Adopt bylaws to govern the conduct of its affairs, and adopt
36 rules and regulations, including a conflict of interest policy and
37 code of ethics for commissioners and officers of the Commission,
38 and make appropriate orders to carry out and discharge its powers,
39 duties, and functions;

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

43 e. Recommend appropriate federal, state, and local government
44 legislation and agency administrative action pertaining to the
45 Project;

46 f. Within 18 months of the date the Commission organizes and
47 not less than annually thereafter, prepare a progress report on its
48 activities, and submit it, together with any recommendations for

1 state or local government legislation or agency administrative
2 action to the governor of the state of New Jersey, the president of
3 the senate of the state of New Jersey, the speaker of the general
4 assembly of the state of New Jersey, the governor of the state of
5 New York, the temporary president of the senate of the state of New
6 York, and the speaker of the assembly of the state of New York;
7 and

8 g. Take such other action as may be necessary or appropriate to
9 further the purposes of this act.

10

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

13 a. Facilitate the project, including, but not limited to, through
14 contracts and agreements and other documents and instruments
15 which the Commission is otherwise authorized to make, enter into,
16 execute, and deliver; provided, however, that the Commission shall
17 not have the authority to operate or directly engage in transportation
18 services such that the Commission would be subject to the
19 jurisdiction of the federal Surface Transportation Board;

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

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

33 d. Acquire (including, without limitation, by gift, purchase,
34 exchange or condemnation in accordance with the requirements of
35 this act), subdivide, lease, license, take, and hold property of every
36 description and to manage such property and develop any
37 undeveloped property owned, leased, or controlled by it in a manner
38 necessary or appropriate to Facilitate the Project;

39 e. Make, procure, enter into, execute and deliver contracts and
40 agreements and other documents and instruments as may be
41 necessary or appropriate to carry out any power of the Commission
42 under this act and to otherwise accomplish any lawful purpose
43 which the commissioners determine will Facilitate the Project,
44 including, without limitation, with the federal government, the state
45 of New Jersey, any local government thereof, the state of New
46 York, with any local government thereof, with any agency,
47 instrumentality, department, commission or authority of any one or
48 more of the foregoing, any bi-state agency, Amtrak, any individual

- 1 or private firm, entity or corporation, or with any one or more of
2 them;
- 3 f. Make applications for and accept funding, permits,
4 authorizations and approvals as may be necessary or appropriate to
5 accomplish any lawful purpose which the commissioners determine
6 will Facilitate the Project, including, without limitation, with the
7 federal government, the state of New Jersey, any local government
8 thereof, the state of New York, any local government thereof, with
9 any agency, instrumentality, department, commission or authority
10 of any one or more of the foregoing, any bi-state agency, Amtrak,
11 any individual or private firm, entity or corporation, or with any one
12 or more of them;
- 13 g. Grant public and private entities the use of the Project or a
14 portion thereof by way of franchise, concession, license, lease, or
15 otherwise, provide for payments to and accept payments from such
16 entities in exchange for value received from such use, work, or
17 services performed or otherwise and to establish with Project users
18 revenue sharing agreements for the use of the Project, through
19 which the Commission may accept a portion of tolls, fees, rates,
20 charges, and rentals established, levied, and collected by a Project
21 user, provided that such tolls, fees, rates, charges, and rentals do not
22 conflict with applicable federal law, the laws of the state of New
23 Jersey and the state of New York, and paragraph (6) of subsection
24 a. of section 4 of this act, and provided further that the Commission
25 shall not have the authority to set passenger fares for Amtrak or any
26 publicly owned and operated passenger service utilizing the Project;
- 27 h. In accordance with section 16 of this act, adopt its own
28 public procurement rules and guidelines that the Commission deems
29 necessary or appropriate to Facilitate the Project through any
30 combination of means and methods otherwise available to the
31 Commission under this act, regardless of whether such combination
32 is generally available to the state of New Jersey, any local
33 government thereof, the state of New York, any local government
34 thereof, any agency, instrumentality, department, commission or
35 authority of any one or more of the foregoing, or any bi-state
36 agency, and engage and contract with third parties in accordance
37 with such procurement rules and guidelines;
- 38 i. In accordance with section 18 of this act, dispose of, convey
39 or transfer all or any portion of the Project for value as may be
40 expeditious for the Facilitation of the Project, so long as it has
41 determined that the transferee has or is provided with a sufficient
42 source of financing to acquire, operate, maintain and own the
43 Project;
- 44 j. Issue and guarantee bonds, notes, or other evidence of
45 indebtedness, enter into loan agreements and otherwise borrow
46 funds, or incur indebtedness or other future payment obligations for
47 any corporate purpose, including to effectuate Full Funding, and to
48 assign, pledge, mortgage, secure, encumber and use its funds,

1 assets, properties, and revenues for repayment thereof, to be
2 payable out of the funds, assets, properties, and revenues of the
3 Commission without recourse to taxation, provided that the
4 Commission shall have no power to pledge the full faith and credit
5 of the federal government, the state of New Jersey, any local
6 government thereof, the state of New York, any local government
7 thereof or of Amtrak or the Port Authority of New York and New
8 Jersey in connection with the project, or to impose any obligation
9 for payment of the bonds upon the federal government, the state of
10 New Jersey, any local government thereof, the state of New York,
11 any local government thereof or of Amtrak or the Port Authority of
12 New York and New Jersey, in each case except as set forth in a
13 binding agreement, or to otherwise commit any party to incur any
14 liability in excess of its contractual obligations in connection with
15 the Project, and provided further that neither the commissioners nor
16 any person executing any bonds issued or guaranteed by the
17 Commission shall be liable personally on such bonds or be subject
18 to any personal liability or accountability by reason of the issuance
19 thereof;

20 k. Acquire and hold securities for investment purposes or in
21 connection with the Facilitation of the Project;

22 l. Appoint, employ, contract with, and compensate such
23 officers, employees and agents, including engineers, attorneys,
24 consultants, financial advisors, and such other persons or entities as
25 the business of the Commission may require and to engage and
26 dismiss such officers, employees, and agents at will, and fix and
27 provide for the qualification, appointment, removal, term, tenure,
28 compensation, pension, and retirement rights of its officers and
29 employees;

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

33 n. Cooperate with the federal government, the state of New
34 Jersey, any local government thereof, the state of New York, any
35 local government thereof, with any agency, instrumentality,
36 department, commission or authority of any one or more of the
37 foregoing, any bi-state agency, Amtrak, any individual or private
38 firm, entity or corporation, or with any one or more of them, in
39 connection with the Project, and to enter into an agreement or
40 agreements, notwithstanding any other provision of law of the
41 states, general, special, charter or local, with the federal
42 government, with the state of New Jersey, any local government
43 thereof, the state of New York, any local government thereof any
44 agency, instrumentality, department, commission, or authority of
45 any one or more of the foregoing, any bi-state agency, Amtrak, any
46 individual or private firm, entity, or corporation, or with any one or
47 more of the same for or relating to the Project;

- 1 o. Indemnify individuals and entities to the extent required to
2 facilitate the project;
- 3 p. Establish or acquire subsidiaries as required to Facilitate the
4 Project;
- 5 q. Utilize the existing labor force in the states and foster labor
6 harmony in allowing for adoption of efficient labor work rules and
7 practices during construction of the Project; and
- 8 r. Exercise all other powers as may be necessary or appropriate
9 in furtherance of, and consistent with, the purposes of this act.
- 10
- 11 9. (New section) Exemption from taxes, local laws.
- 12 a. The Commission shall be performing essential governmental
13 functions in exercising its powers and functions and in carrying out
14 the provisions of this act and of any law relating thereto, and shall
15 not be required to pay any taxes or assessments of any character,
16 levied by either state or any local government thereof, upon any of
17 the property used by it or its agents or contractors for the
18 Facilitation of the Project, or any income or revenue therefrom,
19 including any profit from a sale, lease or exchange, or in connection
20 with the transfer thereof or of any real property interest therein.
21 Any bonds or other securities or obligations issued by the
22 Commission, their transfer and the interest paid thereon or income
23 therefrom, including any profit from a sale or exchange, shall at all
24 times be free from taxation by either state or any subdivision
25 thereof.
- 26 b. The Commission shall, as a matter of policy, conform to the
27 enactments, ordinances, resolutions, and regulations of the
28 respective states and local governments where the Project is located
29 in regard to the construction and maintenance of the Project and in
30 regard to health and fire protection which would be applicable if the
31 Commission were a private corporation, to the extent that the
32 Commission finds it practicable so to do, without interfering with,
33 impairing, or affecting the efficiency of its purposes under this act,
34 or its ability to effectuate the Project upon a self-supporting basis,
35 or its obligations, duties, and responsibilities to the two states, its
36 bondholders, if any, and the general public, but the decision of the
37 Commission as to whether it is practicable so to do shall be
38 controlling. To that end, the Commission shall submit copies of
39 plans and specifications for buildings and structures to the
40 appropriate state and local government officials and shall consult
41 with them with respect thereto, and shall receive their comments
42 and suggestions thereon, but the Commission shall make the final
43 determination as to which comments and suggestions to accept in
44 effectuating the project.
- 45 c. Notwithstanding the provisions of subsection a. of this
46 section, the Commission is hereby authorized and empowered, in its
47 discretion, to enter into a voluntary agreement or agreements with
48 any local government whereby the Commission may undertake to

1 pay in lieu of taxes a fair and reasonable sum, if any, annually in
2 connection with any real property acquired and owned by the
3 Commission for any of the purposes of this act, and to provide for
4 the payment as a rental or additional rental charge by any person
5 occupying any portion of such real property as lessee, vendee or
6 otherwise of such fair and reasonable sum, provided that in no event
7 shall any voluntary agreement entered into by the commission
8 provide for the payment of an amount in lieu of taxes in excess of
9 the amount last paid as taxes upon such real property prior to the
10 time of its acquisition by the Commission.

11 d. Notwithstanding any other provision of law, general, special,
12 charter, or local, each local government is hereby authorized and
13 empowered to enter into such agreement or agreements with the
14 Commission, and to accept the payment or payments which the
15 Commission is hereby authorized and empowered to make, and the
16 sums so received by such local government shall be devoted to
17 purposes to which taxes may be applied in all affected taxing
18 jurisdictions unless and until otherwise directed by law of the state
19 in which such local government is located.

20

21 10. (New section) Commission annual financial reporting.

22 The Commission shall publish a comprehensive annual financial
23 report, submitted annually to the governors and state legislatures of
24 New York and New Jersey and made available on the Commission's
25 website within 120 days after the end of its fiscal year. The annual
26 report shall include:

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

36 b. a financial section including: an independent auditor's
37 report; management's discussion and analysis; financial statements;
38 its financial reports certified by the co-chairpersons of the board,
39 chief executive officer, and chief financial officer of the
40 Commission, including audited financials in accordance with
41 generally accepted accounting principles, known as GAAP, and the
42 accounting standards issued by the governmental accounting
43 standards board, known as GASB, grant and subsidy programs,
44 current ratings, if any, of its bonds issued by recognized bond rating
45 agencies and notice of changes in such ratings, and long-term
46 liabilities, including leases and employee benefit plans; a schedule
47 of its bonds and notes outstanding at the end of its fiscal year,
48 together with a statement of the amounts redeemed and incurred

1 during such fiscal year as part of a schedule of debt issuance that
2 includes the date of issuance, term, amount, interest rate, and means
3 of repayment including all refinancings, calls, refundings,
4 defeasements, and interest rate exchange or other such agreements;
5 and at a minimum a four-year financial plan, including a current
6 and Projected capital budget, and an operating budget report,
7 including an actual versus estimated budget, with an analysis and
8 measurement of financial and operating performance.

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

29
30 11. (New section) Commission audits and financial statements.

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

35 b. The board shall arrange for an independent firm of certified
36 public accountants to perform an audit of the financial statements of
37 the Commission each year, in accordance with generally accepted
38 accounting principles and standards referenced in subsection a. of
39 this section. Each independent firm of certified public accountants
40 that performs any audit required by this section shall timely report
41 to the board:

42 (1) all critical accounting policies and practices to be used; and

43 (2) other material written communications, that is not privileged
44 or confidential, between the independent firm of certified public
45 accountants and the management of the Commission, including the
46 management letter along with management's response or plan of
47 corrective action, material corrections identified, or schedule of
48 unadjusted differences.

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

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

27 e. The Commission shall not contract with the independent
28 firm of certified public accountants performing the Commission's
29 audit for any non-audit services to such Commission
30 contemporaneously with the audit including:

- 31 (1) bookkeeping or other services related to the accounting
32 records or financial statements of such Commission;
- 33 (2) financial information systems design and implementation;
- 34 (3) appraisal or valuation services, fairness opinions, or
35 contribution-in-kind reports;
- 36 (4) actuarial services;
- 37 (5) internal audit outsourcing services;
- 38 (6) management functions or human services;
- 39 (7) broker or dealer, investment advisor, or investment banking
40 services; and
- 41 (8) legal services and expert services unrelated to the audit.

42 f. The Commission shall not contract with an independent firm
43 of certified public accountants for any audit service if the chief
44 executive officer, chief financial officer, or any other person
45 serving in an equivalent position for the Commission, was
46 employed by that independent firm of certified public accountants
47 and participated in any capacity in the audit of the Commission

1 during the one year period preceding the date of the initiation of the
2 audit.

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

7

8 12. (New section) Debt issuance.

9 a. The issuance of any bonds, notes, or other instruments of
10 indebtedness by the Commission shall be undertaken in a manner
11 consistent with applicable laws governing the Commission and
12 covenants with the holders of the commission's bonds, notes, or
13 other instruments of indebtedness.

14 b. At least sixty days prior to an intended issuance, the
15 Commission shall submit to the governor, and legislature of each
16 state a statement of intent in regards to the issuance of and overall
17 amount of bonds, notes, or other debt obligations anticipated, at the
18 time the statement is submitted, during the next fiscal year.

19

20 13. (New section) Capital plan.

21 a. No later than January thirtieth, two thousand twenty, the
22 Commission shall adopt a ten-year capital plan with respect to
23 Project assets, if any, for which the Commission has ongoing
24 maintenance obligations that is developed using a comprehensive
25 planning process and risk-based prioritization that considers asset
26 condition, operational and revenue impact, threat assessment,
27 customer service, regional benefit, and regulatory or statutory
28 requirements. The capital plan shall be dependent upon the
29 availability of sufficient funding and other resources to pursue the
30 capital Projects proposed for the ten-year period. Performance
31 progress and revisions to reflect changes in programs, policies, and
32 Projects and the environment in which the Commission operates by
33 the board, and the capital plan shall be revised periodically as
34 necessary and appropriate, and shall be reviewed with the board
35 annually. The Commission shall publish an annual report on the
36 status of the capital program and such report shall be made publicly
37 available on the Commission's website. Prior to adoption of a
38 capital plan, the Commission shall make the proposed plan
39 available for public review and comments on its public website for
40 at least four weeks prior to approval, and all comments received by
41 the Commission are to be distributed to the board for review prior
42 to consideration of the capital plan.

43 b. The Commission shall also provide that major capital
44 Projects are monitored by external engineering consultants. The
45 external engineering consultants shall prepare annual reports to be
46 provided to the board and made available to the public. The annual
47 reports prepared by external engineering consultants shall include,
48 but not be limited to, a comparison of actual and target performance

1 measures including, but not limited to, costs and construction
2 schedules, and a narrative explanation of any discrepancy thereof.
3 For the purposes of this section: "Major capital Project" means an
4 undertaking or program for the acquisition, creation, or
5 development of any crossing, transportation facility, or commerce
6 facility or any part thereof, with an estimated total Project cost in
7 excess of \$500,000,000.

8

9 14. (New section) Operating budget. The Commission shall
10 prepare a detailed annual operating budget beginning with the fiscal
11 year commencing after the effective date of this act. A preliminary
12 annual operating budget shall be made publicly available on the
13 Commission's website each fiscal year and a final annual operating
14 budget shall be made publicly available on the Commission's
15 website each fiscal year. The time with which such preliminary
16 annual operating budget and final annual operating budget shall be
17 made public during each fiscal year shall be determined by the
18 Commission.

19

20 15. (New section) a. The minutes of every meeting of the
21 Gateway Development Commission held under or within the
22 purview of this act shall be forthwith transmitted, by and under the
23 certification of the Commission thereof, to the Governor of each
24 state. No action taken at such meeting by any commissioner
25 appointed from each respective state shall have force or effect for a
26 period of ten days, Saturdays, Sundays, and public holidays
27 excepted, after the minutes shall have been so transmitted and
28 delivered unless the respective Governor shall finally approve the
29 minutes or any part thereof, reciting any such action, within said
30 ten-day period.

31 b. Each Governor shall, within ten days, exclusive of
32 Saturdays, Sundays, or public holidays, after the minutes shall have
33 been so delivered, cause the same to be returned to the Gateway
34 Development Commission either with or without his veto on any
35 action therein recited as having been taken by any commissioner
36 appointed from the Governor's respective state. If the Governor
37 does not return the minutes within said ten-day period, any action
38 therein recited as having been taken at such meeting by any
39 commissioner appointed from the Governor's respective state shall
40 have force and effect according to the wording thereof.

41

42 16. (New section) Contracts of the Commission.

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

45 "Construction item" means any such item or material used in
46 construction and which is procured directly by the Commission or
47 office or any such item or material commonly used in construction

1 which is procured by a person, other than a municipality, under
2 contract with the commission.

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

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

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

18 "Specification" means any description of the physical or
19 functional characteristics, or of the nature of a material, supply,
20 equipment or construction item. It may include a description of any
21 requirement for inspecting, testing or preparing a material, supply,
22 equipment or construction item for delivery.

23 b. Specifications. The Commission shall create and update
24 product specifications to ensure that:

25 (1) Specifications do not exclude the use of products
26 manufactured from secondary materials or require that products be
27 manufactured from virgin materials only, provided however, the
28 specifications may include such an exclusion if the Commission
29 demonstrates that for a particular end use a product containing
30 secondary materials would not meet necessary performance
31 standards or that the cost of such products exceeds that of similar
32 products manufactured from virgin materials.

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

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

37 (4) Specifications incorporate or require the use of secondary
38 materials to the maximum extent practicable without jeopardizing
39 the performance or intended end use of the product; provided
40 however, where the Commission demonstrates that for a particular
41 end use a product containing secondary materials would not meet
42 necessary performance standards or that the cost of such product
43 exceeds that of similar products manufactured from virgin
44 materials, such specifications need not incorporate or require the
45 use of secondary materials.

46 c. Ground for cancellation of contract by the Commission. A
47 clause shall be inserted in all specifications or contracts hereafter
48 made or awarded by the Commission, for work or services

1 performed or to be performed or goods sold or to be sold, to provide
2 that upon the refusal by a person, when called before a grand jury,
3 head of a state department, temporary state Commission or other
4 agency of the state of New York or the state of New Jersey, the
5 organized crime task force in the department of law of the state of
6 New York, head of a city department, or other city agency, which is
7 empowered to compel the attendance of witnesses and examine
8 them under oath, to testify in an investigation concerning any
9 transaction or contract had with the applicable state, any political
10 subdivision thereof, a public authority or with any public
11 department, agency or official of the state of New York or the state
12 of New Jersey or of any political subdivision thereof or of a public
13 authority, to sign a waiver of immunity against subsequent criminal
14 prosecution or to answer any relevant question concerning such
15 transaction or contract, such person, and any firm, partnership or
16 corporation of which he or she is a member, partner, director or
17 officer shall be disqualified from thereafter selling to or submitting
18 bids to or receiving awards from or entering into any contracts with
19 the Commission or official thereof, for goods, work or services, for
20 a period of five years after such refusal.

21 d. Disqualification to contract with the Commission. Any
22 person who, when called before a grand jury, head of a state
23 department, temporary state Commission or other state agency of
24 the state of New York or the state of New Jersey, the organized
25 crime task force in the department of law of the state of New York,
26 head of a city department, or other city agency, which is
27 empowered to compel the attendance of witnesses and examine
28 them under oath, to testify in an investigation concerning any
29 transaction or contract had with the applicable state, any political
30 subdivision thereof, a public authority or with a public department,
31 agency or official of the state or of any political subdivision thereof
32 or of a public authority, refuses to sign a waiver of immunity
33 against subsequent criminal prosecution or to answer any relevant
34 questions concerning such transaction or contract, and any firm,
35 partnership or corporation, of which he or she is a member, partner,
36 director or officer shall be disqualified from thereafter selling to or
37 submitting bids to or receiving awards from or entering into any
38 contracts with the Commission or any official of the commission,
39 for goods, work or services, for a period of five years after such
40 refusal or until a disqualification shall be removed pursuant to the
41 provisions of subsection e. of this section. It shall be the duty of the
42 officer conducting the investigation before the grand jury, the head
43 of a state department, the chairman of the temporary state
44 commission or other state agency of the state of New York or the
45 state of New Jersey, the organized crime task force in the
46 department of law of the state of New York, the head of a city
47 department or other city agency before which the refusal occurs to
48 send notice of such refusal, together with the names of any firm,

1 partnership or corporation of which the person so refusing is known
2 to be a member, partner, officer or director, to the commissioner of
3 transportation of the state of New York or the state of New Jersey,
4 or the commissioner of general services as the case may be, and the
5 appropriate departments, agencies and officials of the applicable
6 state, political subdivisions thereof or public authorities with whom
7 the persons so refusing and any firm, partnership or corporation of
8 which he or she is a member, partner, director or officer, is known
9 to have a contract. However, when such refusal occurs before a
10 body other than a grand jury, notice of refusal shall not be sent for a
11 period of ten days after such refusal occurs. Prior to the expiration
12 of this ten-day period, any person, firm, partnership or corporation
13 which has become liable to the cancellation or termination of a
14 contract or disqualification to contract on account of such refusal
15 may commence a special proceeding at a special term of the
16 supreme court of New York or superior court of New Jersey, held
17 within the judicial district in which the refusal occurred, for an
18 order determining whether the questions in response to which the
19 refusal occurred were relevant and material to the inquiry. Upon the
20 commencement of such proceeding, the sending of such notice of
21 refusal to answer shall be subject to order of the court in which the
22 proceeding was brought in a manner and on such terms as the court
23 may deem just. If a proceeding is not brought within ten days,
24 notice of refusal shall thereupon be sent as provided in this
25 subsection.

26 e. Removal of disqualification of public contractors by
27 petition.

28 (1) Any firm, partnership or corporation which has become
29 subject to the cancellation or termination of a contract or
30 disqualification to contract on account of the refusal of a member,
31 partner, director or officer thereof to waive immunity when called
32 to testify, as provided in subsection d. of this section, may, upon ten
33 days' notice to the attorney general of the state in which the refusal
34 occurred and to the officer who conducted the investigation before
35 the grand jury or other body in which the refusal occurred,
36 commence a special proceeding at a special term of the supreme
37 court of New York or superior court of New Jersey held within the
38 judicial district in which the refusal occurred for a judgment
39 discontinuing the disqualification. Such application shall be in the
40 form of a petition setting forth grounds, including that the
41 cooperation by petitioner with the grand jury or other body at the
42 time of the refusal was such, and the amount and degree of control
43 and financial interest, if any, in the petitioning firm, partnership or
44 corporation by the member, partner, officer or director who refused
45 to waive immunity is such that it will not be in the public interest to
46 cancel or terminate petitioner's contracts or to continue the
47 disqualification, as provided in subsection d. of this section. A copy

1 of the petition and accompanying papers shall be served with the
2 notices to be given pursuant to this section.

3 (2) Upon the filing of a petition described in paragraph (1) of
4 this subsection the court may stay as to petitioner, pending a
5 decision upon the petition, the cancellation or termination of any
6 contracts resulting from such refusal upon such terms as to notice or
7 otherwise as may be just.

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

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

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

24 f. Statement of non-collusion in bids or proposals to the
25 Commission.

26 (1) Every bid or proposal hereafter made to the Commission or
27 to any official of the Commission, where competitive bidding is
28 utilized, for work or services performed or to be performed or
29 goods sold or to be sold, shall contain the following statement
30 subscribed by the bidder and affirmed by such bidder as true under
31 the penalties of perjury:

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

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

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

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

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

17 (3) Any bid hereafter made to the Commission by a corporate
18 bidder for work or services performed or to be performed or goods
19 sold or to be sold, where competitive bidding is utilized, and where
20 such bid contains the certification referred to in paragraph (1) of
21 this subsection, shall be deemed to have been authorized by the
22 board of directors of the bidder, and such authorization shall be
23 deemed to include the signing and submission of the bid and the
24 inclusion therein of the certificate as to non-collusion as the act and
25 deed of the corporation.

26 g. Procurement contracts.

27 (1) Definitions. For the purposes of this section:

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

33 "Minority business enterprise" means any business enterprise,
34 including a sole proprietorship, partnership, or corporation: with
35 more than fifty percent of the ownership interest owned by one or
36 more minority group members or, in the case of a publicly-owned
37 business, where more than fifty percent of the common stock or
38 other voting interests are owned by one or more minority group
39 members; in which the minority ownership is real, substantial, and
40 continuing; in which the minority ownership has and exercises the
41 authority to control independently the day-to-day business decisions
42 of the enterprise; and authorized to do business in the state of New
43 York or the state of New Jersey, independently owned and operated,
44 and not dominant in its field.

45 "Minority group member" means a United States citizen or
46 permanent resident alien who is and can demonstrate membership in
47 one of the following groups: black persons having origins in any of
48 the black African racial groups not of Hispanic origin; Hispanic

1 persons of Mexican, Puerto Rican, Dominican, Cuban, Central or
2 South American of either Indian or Hispanic origin, regardless of
3 race; Asian and Pacific Islander persons having origins in any of the
4 Far East, Southeast Asia, the Indian subcontinent or the Pacific
5 Islands; or Native American persons having origins in any of the
6 original peoples of North America.

7 "Professional firm" means any individual or sole proprietorship,
8 partnership, corporation, association, or other legal entity permitted
9 by law to practice the professions of architecture, engineering, or
10 surveying.

11 "Women-owned business enterprise" means a business
12 enterprise, including a sole proprietorship, partnership or
13 corporation: with more than fifty percent of the ownership interest
14 owned by one or more United States citizens or permanent resident
15 aliens who are women or, in the case of a publicly-owned business,
16 where more than fifty percent of the common stock or other voting
17 interests is owned by United States citizens or permanent resident
18 aliens who are women; in which the ownership interest of women is
19 real, substantial, and continuing; in which the women ownership
20 has and exercises the authority to control independently the day-to-
21 day business decisions of the enterprise; and authorized to do
22 business in the state of New York or the state of New Jersey,
23 independently owned and operated, and not dominant in its field.

24 "Procurement contracts" means any written agreement for the
25 acquisition of goods or services of any kind, in the actual or
26 estimated amount of five thousand dollars or more.

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

32 (3) The guidelines approved by the Commission shall include,
33 but not be limited to the following:

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

38 (b) Requirements regarding the selection of contractors, which
39 shall include provisions:

40 (i) for the selection of such contractors on a competitive basis,
41 and provisions relating to the circumstances under which the board
42 may by resolution waive competition; and

43 (ii) setting forth responsibilities of contractors.

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

- 1 (d) Requirements for providing notice, in addition to any other
2 notice of procurement opportunities, to professional and other
3 organizations that serve minority and women-owned business
4 enterprises providing the types of services procured by the
5 Commission.
- 6 (e) The establishment of appropriate goals for participation by
7 minority or women-owned business enterprises in procurement
8 contracts awarded by the Commission and for the utilization of
9 minority and women-owned enterprises as subcontractors and
10 suppliers by entities having procurement contracts with the
11 Commission.
- 12 (f) A listing of the types of provisions to be contained in
13 procurement contracts, including provisions concerning the nature
14 and monitoring of the work to be performed, the use of Commission
15 supplies and facilities, the use of Commission personnel and any
16 other provisions.
- 17 (g) Provisions regarding procurement contracts which involve
18 former officers or employees of the Commission.
- 19 (h) Policies to promote the participation by business enterprises
20 and residents of the state of New York and the state of New Jersey
21 in procurement contracts.
- 22 (4) For the purposes of this subsection:
- 23 "New Jersey business enterprise" means a business enterprise,
24 including a sole proprietorship, partnership, or corporation, which
25 offers for sale or lease or other form of exchange, goods which are
26 sought by the Commission and which are substantially
27 manufactured, produced or assembled in New Jersey, or services
28 which are sought by the Commission and which are substantially
29 performed within New Jersey.
- 30 "New Jersey resident" means a natural person who maintains a
31 fixed, permanent, and principal home located within New Jersey
32 and to which such person, whenever temporarily located, always
33 intends to return.
- 34 "New York resident" means a natural person who maintains a
35 fixed, permanent and principal home located within New York state
36 and to which such person, whenever temporarily located, always
37 intends to return.
- 38 "New York state business enterprise" means a business
39 enterprise, including a sole proprietorship, partnership, or
40 corporation, which offers for sale or lease or other form of
41 exchange, goods which are sought by the Commission and which
42 are substantially manufactured, produced or assembled in New
43 York state, or services which are sought by the Commission and
44 which are substantially performed within New York state.
- 45 (5) The Commission shall have the power from time to time to
46 amend such procurement contract guidelines in accordance with the
47 provisions of this section.

1 (6) The Commission shall annually prepare and approve a report
2 on procurement contracts, where any such contracts have been
3 entered into for such year, which shall include the guidelines, as
4 specified in this section, an explanation of the guidelines and any
5 amendments thereto since the last annual report. Such report on
6 procurement contracts may be a part of any other annual report that
7 the corporation is required to make.

8 (7) The Commission shall annually submit its report on
9 procurement contracts to the governor of New York and the
10 governor of New Jersey and copies thereof to the New York senate
11 finance committee, New Jersey senate budget and appropriations
12 committee, the New York assembly ways and means committee, the
13 New Jersey general assembly appropriations committee, and the
14 New York state authorities budget office. The Commission shall
15 make available to the public copies of its report on procurement
16 contracts upon reasonable request therefor.

17 (8) Nothing contained in this subsection shall be deemed to
18 alter, affect the validity of, modify the terms of or impair any
19 contract or agreement made or entered into in violation of, or
20 without compliance with, the provisions of this section.

21
22 17. (New section) Subsidiaries of the Commission.

23 a. The commission shall provide notice to the governor of each
24 state, the majority leader of each house of the legislature of each
25 state no less than sixty days prior to the formation of the subsidiary.

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

28 c. Within sixty days of the effective date of this act, and on or
29 before the first day of January of each year annually thereafter, any
30 subsidiary corporation, in cooperation with the Commission, shall
31 provide to the governor and legislature of each state a report on the
32 subsidiary corporation. The report shall include for each subsidiary:

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

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

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

40 (4) a complete report of the purpose, operations, mission, and
41 Projects of the subsidiary; and

42 (5) any other information the subsidiary corporation deems
43 important to include in the report.

44 d. Sixty days prior to the issuance of any debt by the subsidiary
45 corporation, or the Commission on behalf of the subsidiary
46 corporation, the Commission shall in addition to any other
47 requirements concerning the issuance of debt by the Commission,
48 provide notice to the governor of each state, and the majority leader

1 of each house of the legislature of each state. For purposes of this
2 section, as applicable to New York state "majority leader" shall
3 mean the speaker of the assembly of the New York state legislature
4 or temporary president of the senate of the New York state
5 legislature. For purposes of this section, as applicable to the state of
6 New Jersey "majority leader" shall mean the president of the senate
7 or the speaker of the general assembly of the state of New Jersey.

8

9 18. (New section) Disposition of property by the Commission.

10 a. Any sale of real property by the Commission shall be
11 undertaken and conducted pursuant to the provisions of the existing
12 laws governing the sale of real property by the Commission in the
13 state in which such real property is located and by approval of the
14 board.

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

23 c. Disposal of real property for less than fair market value. No
24 property owned, leased, or otherwise in the control of the
25 Commission may be sold, leased, or otherwise alienated for less
26 than its fair market value unless:

27 (1) the transferee is a government or other public entity, and the
28 terms and conditions of the transfer require that the ownership and
29 use of the real property will remain with the government or any
30 other public entity; or

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

36 d. The board shall adopt, prior to the appropriation of any
37 property, appropriate rules and regulations concerning disposition,
38 acquisition, and transfer of real property or any interest in real
39 property by the Commission which shall, at a minimum, include a
40 requirement that the following information be made available to the
41 board at the meeting where approval of such a disposition,
42 acquisition or transfer is scheduled:

43 (1) a full description of the property;

44 (2) a description of the purpose of the disposition, acquisition,
45 or transfer;

46 (3) a statement of the value to be received from such a
47 disposition, acquisition, or transfer;

1 (4) the names of any private parties participating in the
2 disposition, acquisition, or transfer; and

3 (5) in the case of a property disposition for less than fair market
4 value, an explanation and a written determination by the board that
5 there is no reasonable alternative to the proposed below-market
6 value that would achieve the same purpose of such disposition.

7 e. Not less than ten days in advance of any meeting of the
8 board at which the board is to consider an action to authorize the
9 sale of real property owned by the Commission, the chief executive
10 officer of the Commission shall provide public notice of such
11 proposed action along with relevant material terms and provisions
12 of such sale including, but not limited to, the information made
13 available pursuant to subsection d. of this section, by posting on the
14 Commission's website.

15 f. The chief executive officer may authorize or arrange for
16 contracts for the sale of personal property owned by the
17 Commission upon such terms and conditions as the chief executive
18 officer may deem proper and execute the same on behalf of the
19 Commission where the value of such personal property is not in
20 excess of \$1,000,000; provided, however, that personal property
21 valued at more than \$250,000 shall not be sold by authority of the
22 chief executive officer other than to the highest bidder after public
23 advertisement. Where the value of such personal property is in
24 excess of \$1,000,000, the sale of such property must be authorized
25 by the board upon such terms as the board may deem proper.

26 g. The Commission may retain brokers or third-party vendors
27 that facilitate online auctions, or assist in disposing of surplus real
28 and personal property of the Commission.

29
30 19. (New section)

31 a. Notwithstanding the provisions of any general or special
32 statutes, the comptroller of the state of New York and the
33 comptroller of the state of New Jersey and their legally authorized
34 representatives are hereby authorized and empowered from time to
35 time to examine the accounts books of the Commission, including
36 their receipts, disbursements, contracts, leases, sinking fund,
37 investments and such other items referring to their financial
38 standing and receipts and disbursements as such comptroller may
39 deem proper. Such examination may be made by either comptroller
40 at any time or both comptrollers acting together.

41 b. The comptrollers of the respective states acting individually
42 or collectively shall report to the governors and the legislatures of
43 the respective states the result of such examination.

44
45 20. (New section) State commitment. The state of New Jersey
46 and the state of New York shall provide equal funding for phase one
47 of the Project. To the extent that the Port Authority of New York
48 and New Jersey provides support for debt service obligations

1 incurred by the Commission for phase one, the value of that support
2 will be ascribed one-half each to the state of New York and the
3 state of New Jersey in determining their total funding for the state
4 commitment to phase one. The governor of New Jersey, the
5 governor of New York and the executive director of the Port
6 Authority shall execute a memorandum of understanding detailing
7 the timing and source of funding for their commitment to phase one
8 of the Project, and if agreed to in an amendment to a memorandum,
9 for phase two of the Project or portions thereof.

10 For any toll or fee imposed on an instrumentality of either state,
11 pursuant to a memorandum of understanding executed pursuant to
12 this section, the revenue generated from that toll or fee shall count
13 toward that state's share for purposes of any memorandum of
14 understanding established pursuant to this section.

15
16 21. (New section) The facilitation of any portion of the Project
17 that is located within New York state shall be designated public
18 work and shall be subject to the respective provisions of New York
19 state labor law that are applicable as a result of such designation.
20 However, nothing herein shall be construed to prevent the
21 compliance with federal law, regulations or other requirements for
22 any portion of the Project anticipated to be funded by federal
23 funding.

24 The facilitation of any portion of the Project that is located
25 within the state of New Jersey shall be designated public work and
26 shall be subject to the respective provisions of New Jersey state
27 labor law that are applicable as a result of such designation.
28 However, nothing herein shall be construed to prevent the
29 compliance with federal law, regulations or other requirements for
30 any portion of the Project anticipated to be funded by federal
31 funding.

32
33 22. (New section) Notwithstanding any other provision of law
34 of New York or New Jersey, general, special, charter or local, each
35 state and local government, any agency, instrumentality,
36 department, commission or authority thereof, and any bi-state
37 agency are hereby authorized and empowered to cooperate with, aid
38 and assist the Commission in effectuating the provisions of this act,
39 as it may be amended or supplemented hereafter.

40
41 23. (New section) Upon the concurrence of the state of New
42 York, the state of New Jersey and the state of New York consent to
43 suits, actions or proceedings of any form or nature at law, in equity,
44 or otherwise (including proceedings to enforce arbitration
45 agreements), against the Commission, and to appeals therefrom and
46 reviews thereof, except as hereinafter provided. The foregoing
47 consent does not extend to:

- 1 a. suits, actions, or proceedings upon any causes of action
2 whatsoever accruing before the effective date of this act;
- 3 b. suits, actions or proceedings upon any causes of action
4 whatsoever, upon, in connection with, or arising out of any contract,
5 express or implied, entered into or assumed by or assigned to the
6 Commission before the effective date of this act (including any
7 supplement to, or amendment, extension or renewal of any such
8 contract, even if such supplement, amendment, extension or
9 renewal is made on or after the effective date of this act), regardless
10 of whether such cause of action accrued before or after that date;
- 11 c. civil suits, actions or proceedings for the recovery of
12 statutory penalties; and
- 13 d. suits, actions or proceedings for judgments, orders or
14 decrees restraining, enjoining or preventing the Commission from
15 committing or continuing to commit any act or acts, other than
16 suits, actions or proceedings by the Attorney General of New Jersey
17 or by the Attorney General of New York, each of whom is hereby
18 authorized to bring such suits, actions or proceedings in his or her
19 discretion on behalf of any person or persons whatsoever who
20 requests the Attorney General to do so, except in the cases
21 otherwise excluded by this act; provided, that in any such suit,
22 action or proceeding, no judgment, order or decree shall be entered
23 except upon at least two days' prior written notice to the
24 Commission of the proposed entry thereof.

25 The Commission shall be immune from liability as though it
26 were the state of New York, except to the extent that such immunity
27 is waived by the state of New York under section 8 of the New
28 York court of claims act.

29

30 24. (New section) The Commission shall dissolve following a
31 joint determination by the Governor of New Jersey and the
32 Governor of New York that the Project has been completed or
33 should be transferred to another agency, instrumentality or entity
34 and:

35 any bonds or other securities issued and any other debt incurred
36 for such Project purposes have been repaid or arrangements have
37 been made to ensure such repayment in full, without impairment of
38 credit worthiness; and

39 Amtrak is not unduly prejudiced by such dissolution.

40

41 25. (New section) Section 1 through section 24 of this act
42 establishing the "Gateway Development Commission Act" may be
43 amended, altered, supplemented, or repealed from time to time
44 through the enactment of law by one state concurred in through the
45 enactment of law in the other state.

46

47 26. Severability. a. If any provision of this act or the
48 application thereof to any person or circumstance is held invalid,

1 including as not in accordance with federal law or federal
2 constitutional requirements, such invalidity shall not affect other
3 provisions or applications of the act which can be given effect
4 without the invalid provision or application and to this end the
5 provisions of this act are declared to be severable.

6 b. The provisions of this act, and the powers vested in the
7 Gateway Development Commission, shall be liberally construed to
8 give effect to the purposes of this act.

9

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

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

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

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

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

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

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

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

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

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

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

46 (2) Aeronautics permits;

47 (3) Right-of-way permits;

48 (4) Traffic signal control systems;

- 1 (i) Develop and promote programs for the preservation,
2 improvement and expansion of freight railroads, with special
3 emphasis on the use of rail rights of way for the purpose of
4 providing rail freight service;
- 5 (j) Develop and promote a program to ensure the safety and
6 continued operation of aviation facilities in New Jersey;
- 7 (k) Enter into agreements with a public or private entity or
8 consortia thereof to provide for the development of demonstration
9 projects through the use of public-private partnerships pursuant to
10 sections 1 through 9 of P.L.1997, c.136 (C.27:1D-1 through
11 C.27:1D-9);
- 12 (l) Do any and all things necessary, convenient or desirable to
13 effectuate the purposes of P.L.1966, c.301 (C.27:1A-1 et seq.) and
14 to exercise the powers given and granted in that act; **[and]**
- 15 (m) Enter into agreements or contracts with a private entity and
16 charge and collect fees or other payments for the placement of
17 sponsorship acknowledgment and advertising on signs, equipment,
18 materials, and vehicles used for a safety service patrol or emergency
19 service patrol program operated by the department, or operated by a
20 private entity under contract with the department or through the use
21 of a public-private partnership or demonstration project; and
- 22 (n) Acquire by eminent domain, pursuant to the eminent domain
23 law and R.S.27:7-22, any property, property rights, or property
24 interests, including easements, air rights, below-grade and
25 subsurface rights, hereinafter referred to as "Property Interests,"
26 including rights on property now or previously designated as
27 parkland or dedicated to a public use, provided that such Property
28 Interests are located in the State and, in the judgment of the
29 commissioner, are necessary or appropriate for the construction,
30 reconstruction, development, redevelopment, use, occupancy,
31 operation, and maintenance of passenger rail transportation
32 facilities and ancillary facilities between New Jersey and New York
33 Penn Station, in a corridor beginning at or near Newark Penn
34 Station and ending at the boundary of the State of New Jersey in the
35 Hudson River. Property Interests may be acquired pursuant to this
36 subsection notwithstanding any requirement in R.S.27:7-36 or any
37 other provision of law, general, special, charter, or local, and
38 regardless of whether the Property Interests are or were dedicated to
39 public use. All of such Property Interests may be acquired by the
40 commissioner pursuant to applicable provisions of the eminent
41 domain law and R.S.27:7-22, provided that any acquisition of
42 Property Interests pursuant to this subsection shall be contingent on
43 the commissioner entering into an agreement addressing such
44 acquisition with the Gateway Development Commission, approved
45 in accordance with that entity's authorizing statute, and the
46 Gateway Development Commission shall agree to pay the costs
47 incurred by the commissioner in acquiring such Property Interests
48 pursuant to the eminent domain law. Notwithstanding any other

1 provision of law, general, special, charter, or local, following
2 acquisition, the commissioner may use such property together with
3 property already owned or held, to: enter into contracts to sell,
4 transfer, lease, or exchange with, or grant easements, licenses,
5 permits, concessions, or other authorizations to, the Gateway
6 Development Commission sufficient to permit the construction,
7 reconstruction, development, redevelopment, use, occupancy,
8 operation, and maintenance by the Gateway Development
9 Commission or its permittees and successors, of the aforementioned
10 passenger rail facilities and ancillary facilities. Authorization is
11 hereby given to the commissioner to do all things necessary or
12 appropriate to carry out the purposes of this subsection.

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

14

15 28. (New section) a. There shall be three commissioners of the
16 Gateway Development Commission appointed from this State, in
17 accordance with P.L. , c. (C.) (pending before the
18 Legislature as this bill).

19 b. The three commissioners shall be appointed in the following
20 manner:

21 (1) one commissioner shall be appointed by the Governor;

22 (2) one commissioner shall be appointed by the Governor upon
23 the recommendation of the Speaker of the General Assembly; and

24 (3) one commissioner shall be appointed by the Governor upon
25 the recommendation of the President of the Senate.

26 The members appointed pursuant to paragraphs (2) and (3) of
27 this subsection shall be appointed before the Governor appoints a
28 member pursuant to paragraph (1) of this subsection.

29 c. Each commissioner appointed pursuant to this section shall
30 be a resident voter of the State of New Jersey at the time of
31 appointment and while serving on the Gateway Development
32 Commission. An individual shall not be appointed to the office of
33 commissioner unless the individual has been a resident voter of the
34 State of New Jersey for at least the two years immediately
35 preceding appointment.

36 d. All vacancies in the office of commissioner of the Gateway
37 Development Commission shall be filled in the same manner as the
38 original appointment.

39 e. Each appointment made to fill a vacancy occurring or
40 existing by reason other than the expiration of a term shall be for
41 the unexpired portion of the term of the appointee's predecessor.

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

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

7 h. The New Jersey co-chairperson of the Gateway
8 Development Commission, whose position is established pursuant
9 to P.L. , c. (C.) (pending before the Legislature as this bill),
10 shall be selected from the three New Jersey commissioners of the
11 Gateway Development Commission appointed pursuant to this
12 section and shall be determined by the affirmative vote of at least
13 two of the New Jersey commissioners.

14

15 29. (New section) The Commission shall be immune from
16 liability in the State of New Jersey in the same manner and to the
17 same extent as is the State of New Jersey under the provisions of
18 the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., and the
19 "New Jersey Contractual Liability Act," N.J.S.59:13-1 et seq.

20

21 30. a. Section 1 through section 25 of this act shall take effect
22 upon the enactment into law by the state of New York of legislation
23 having an identical effect with section 1 through section 25 of this
24 act, but if the state of New York shall have already enacted such
25 legislation, section 1 through section 25 of this act shall take effect
26 immediately. Section 26 through section 29 shall take effect when
27 section 1 through section 25 of this act take effect; provided that the
28 legislative bill drafting commission for the State of New York shall
29 notify the Legislative Counsel of the New Jersey Office of
30 Legislative Services upon the occurrence of the enactment by the
31 state of New York of the legislation referenced in this act in order
32 that the office may maintain an accurate and timely effective
33 database of the official text of the laws of the State of New Jersey;
34 and further provided that the Gateway Development Commission
35 shall notify the Legislative Counsel of the New Jersey Office of
36 Legislative Services upon the occurrence of the intended dissolution
37 pursuant to section 24 of this act in order that the office may
38 maintain an accurate and timely effective database of the official
39 text of the laws of the state of New Jersey.

40 b. This act shall expire and be deemed repealed fifteen years
41 from the effective date herein established, provided, however, that
42 such repeal shall only occur if federal funding that is necessary for
43 purposes of facilitating phase one of the Project has not been
44 granted to the Gateway Development Commission; provided further
45 that the Gateway Development Commission shall notify the
46 Legislative Counsel of the New Jersey Office of Legislative
47 Services upon the occurrence of the repeal of the legislation
48 provided for in this act in order that the Legislative Counsel of the

1 New Jersey Office of Legislative Services may maintain an accurate
2 and timely effective database of the official text of the laws of the
3 state of New Jersey.

4 c. Any amendments to subsection b. of this section shall take
5 effect only upon the enactment into law by the state of New York of
6 legislation having an identical effect, but if the state of New York
7 shall have already enacted such legislation, any amendments to
8 subsection b. of this section shall take effect immediately.