

## CHAPTER 136

AN ACT concerning transportation projects, amending P.L.1966, c.301, P.L.1986, c.56, P.L.1979, c.150 and P.L.1995, c.108 and supplementing Title 27 of the Revised Statutes.

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

C.27:1D-1 Findings, declarations relative to transportation projects.

1. The Legislature finds and declares that:

a. A safe and efficient transportation system is essential to the economic and social well-being of the State and its people, and is a sound economic investment opportunity for both private and public resources.

b. The use of public-private transportation initiatives would enhance the ability of the State to provide a safe and efficient transportation system through use of alternate funding sources and private sector efficiencies; supplement the State's transportation resources in order to allow the State to use its limited resources for other needed projects; and encourage and promote business and employment opportunities for the citizens of New Jersey.

C.27:1D-2 Definitions relative to transportation projects.

2. As used in this act:

"Commissioner" means the Commissioner of Transportation.

"Corporation" means the New Jersey Transit Corporation.

"Department" means the Department of Transportation.

"Demonstration project" means a transportation project selected by the commissioner pursuant to section 3 of this act.

"Developer" means a public or private entity or consortia thereof selected by the public partner from among proposers to develop a demonstration project.

"Intelligent transportation systems" mean the equipment, facilities, property, information management and communications resources which are necessary or desirable for the advancement, management, or operation of a multi-modal transportation network.

"Project agreement" or "demonstration project agreement" means a contract or agreement entered into by the commissioner with a developer providing the terms and conditions under which the developer shall undertake a demonstration project.

"Public highways" means public roads, streets, expressways, freeways, parkways, motorways and boulevards, including bridges, tunnels, overpasses, underpasses, interchanges, rest areas, express bus roadways, bus pullouts and turnarounds, park-ride facilities, traffic circles, grade separations, intelligent transportation systems, traffic control devices, the elimination or improvement of crossings of railroads and highways, whether at grade or not at grade, and any facilities, equipment, property, rights of way, easements and interests therein needed for the construction, improvement and maintenance of highways or intelligent transportation systems.

"Public partner" means the Department of Transportation or the New Jersey Transit Corporation, as the case may be.

"Public transportation project" means, in connection with public transportation service, passenger stations, shelters and terminals, automobile parking facilities, ramps, track connections, signal systems, power systems, information and communication systems, roadbeds, transit lanes or rights of way, equipment storage and servicing facilities, bridges, grade crossings, rail cars, locomotives, motorbuses and other motor vehicles, maintenance and garage facilities, revenue handling equipment and any other equipment, facility or property useful for or related to the provision of public transportation service.

"Transportation project" means, in addition to public highways and public transportation projects, any equipment, facility or property useful or related to the provision of any ground, waterborne or air transportation for the movement of people and goods.

C.27:1D-3 Selection of demonstration projects.

3. a. Commencing with the fiscal year beginning after the effective date of this act and for the next four succeeding fiscal years, the commissioner is authorized to select up to seven transportation projects from the list of transportation projects for which monies have been appropriated in the annual appropriations acts for those five fiscal years to serve as demonstration projects. No more than seven demonstration projects shall be selected by the

commissioner pursuant to this act.

b. Selection by the commissioner of demonstration projects pursuant to subsection a. of this section which are public transportation projects shall be made with the approval of the board of the corporation.

c. If a transportation project is not listed in the annual appropriations acts, the commissioner may submit that project as a demonstration project to the Legislature for approval. The commissioner shall make the submission to the Legislature to the President of the Senate and the Speaker of the General Assembly on a day when both houses are meeting. The President and the Speaker shall cause the date of submission to be entered upon the Senate Journal and the Minutes of the General Assembly, respectively. Unless the project as described in the submission is disapproved by adoption of a concurrent resolution to this effect by the affirmative vote of a majority of the authorized membership of both houses within the time period prescribed in this subsection, the project shall be deemed approved and the public partner shall be authorized to undertake the project. The time period shall commence on the day of submission and expire on the forty-fifth day after submission or for a house not meeting on the forty-fifth day, on the next meeting day of that house.

d. Notwithstanding the provisions of this section to the contrary, demonstration projects shall be subject to the approval of the Joint Budget Oversight Committee or its successor.

C.27:1D-4 Solicitation of proposals by public partner.

4. a. A public partner is authorized to solicit proposals in the five fiscal years after the effective date of this act, as provided in subsection a. of section 3 of this act, from developers to plan, design, construct, equip, operate, finance, improve and maintain, or any combination thereof, demonstration projects selected by the commissioner pursuant to section 3 of this act.

b. A public partner shall select proposals for negotiation of demonstration project agreements based on the overall benefit to the State, the qualifications and financial strength of the proposer, the proposer's responsiveness to the public partner's requirements, the total project cost to be incurred by the public partner, the nature of project financing, the revenues to be generated by the project on behalf of and in support of the State, the impact of any direct or indirect user fees and any other evaluation criteria the public partner deems appropriate. The public partner shall negotiate with one or more proposers to reach a project agreement in the best interests of the State, except that in the event that a private developer, private entity or private consortia benefits from the use of public monies for the construction of a demonstration project pursuant to this act, the project agreement with the developer shall provide that any construction contract entered into by the developer, a private entity or private consortia, to effectuate the agreement shall conform to those requirements concerning advertisement, pre-qualification, bid and award provided for by law for construction contracts entered into by the department or corporation, as the case may be.

c. Any power possessed by a public partner pursuant to this act or any other act or any function performed by the department or the corporation, as the case may be, with respect to transportation projects may be used by that public partner to facilitate the planning, designing, construction, equipment, financing, improvement, maintenance and operation, or any combination thereof, of demonstration projects selected pursuant to this act. Project agreements entered into pursuant to this act may provide for full reimbursement to the State for services rendered by the public partner or other State entities or agencies or for the provision of revenues generated to the State. The public partner is authorized to enter into financing, funding, and credit agreements on such terms as the commissioner deems favorable to the State to promote the purposes of this act. All credit agreements entered into by the public partner pursuant to this act shall be subject to concurrence by the State Treasurer.

d. A project agreement entered into pursuant to this act shall provide for a public involvement and information process to apply to each demonstration project. The purpose of the public involvement and information process shall be to disseminate and provide information about the demonstration project to the public, prospective project users, and the residents of communities affected by the project, and to establish a formal means by which interested persons may comment upon the project and make suggestions.

e. Upon entering into a project agreement pursuant to this act, the public partner shall publish a notice in a newspaper circulating in the county in which the demonstration project will be located describing the project and the responsibilities of the developer and the public partner with respect to the project. If a demonstration project will be located in more than one county or have a regional impact, the notice shall also be published in a publication circulating in the region in which the demonstration project will be located.

C.27:1D-5 Financial conditions; arrangements of projects.

5. a. The department's financial participation in any demonstration project undertaken pursuant to this act shall be subject to legislative appropriation. The corporation's financial participation in any demonstration project undertaken pursuant to this act shall be subject to the availability of funds. Participation by a public partner may take the form of loans or such other financial credit arrangements as may be appropriate to advance an approved project. Agreements entered into pursuant to this act to facilitate such participation shall provide that such loans or other credit arrangements made by the public partner shall yield a reasonable return and be amortized over the term of such agreement, or such lesser period as may be agreed to by the parties.

b. A project agreement entered into pursuant to this act shall provide for the allocation of ownership, leasehold, and other property interests in demonstration projects.

c. The project agreement may authorize the developer to set and impose rents, fares or user fees for use of a facility constructed by it and may require that over the term of the agreement, the rent, fare or fee revenues received by the developer be applied to repayment of the developer's capital outlay costs, interest expense, costs associated with operations, fare or user fee collection, facility management, reimbursement of the State's project review and oversight costs, repayment of loans, revenues to the State, technical and law enforcement services, and a reasonable return on investment to the developer.

d. The project agreement shall specify the manner in which rents, fares or user fees are to be established or revised, the procedures for receiving public comment on the establishment or revision of fares or user fees, including the holding of a public hearing thereon, and the procedures by which the public partner shall oversee the establishment or revision of fares or user fees provided, however, that no fares or user fees shall be subject to oversight unless the developer receives public monies for 10 percent or greater of its operating expenses.

C.27:1D-6 Laws applicable to demonstration projects.

6. Traffic and other laws applicable on the State transportation system shall be enforceable, as appropriate, on demonstration projects constructed by and leased by a developer pursuant to this act.

C.27:1D-7 Demonstration projects subject to State, federal laws.

7. a. Demonstration projects selected pursuant to this act shall be designed, constructed, operated and maintained in accordance with all applicable environmental requirements and all other applicable State and federal laws and regulations necessary to the protection of the public health, safety and welfare.

b. Unless determined otherwise by the corporation, in its sole discretion, the plans and specifications for each demonstration project shall comply with the corporation's standards for public transportation projects.

c. Unless determined otherwise by the commissioner, in his sole discretion, the plans and specifications for each transportation project other than public transportation projects shall comply with the department's standards for transportation projects.

C.27:1D-8 Immunities, defenses applicable to demonstration projects.

8. All absolute and qualified immunities and defenses provided to public entities and public employees by the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., the "New Jersey Contractual Liability Act," N.J.S.59:13-1 et seq., and any other law shall apply to all interests held and activities performed by the department, the corporation and other State agencies in

connection with the demonstration projects selected pursuant to this act.

C.27:1D-9 Public partner may defend, indemnify.

9. a. The public partner may agree to defend and indemnify any person, who, pursuant to a written agreement with the public partner entered into in accordance with this act, designs, constructs, operates, maintains, leases or otherwise holds an interest in a demonstration project, against claims, causes of action, demands, costs or judgments against that person arising as a direct result of the design, construction, interest, operation, or maintenance of that demonstration project. The public partner is authorized to reach agreements to defend and indemnify a person upon the terms and limitations the public partner deems reasonable and appropriate.

b. A determination by the public partner to defend and indemnify pursuant to this section does not bar, reduce, limit or affect any remedies which the public partner may have to enforce the agreement between the public partner and the developer to assert a claim for damages to which the public partner may be entitled arising out of the developer's failure to perform the agreement, or for the recovery of funds expended for the defense of the developer if the defense was undertaken in response to a claim or cause of action brought against the developer which is proven to have arisen from gross negligence, willful misconduct, fraud, intentional tort, bad faith or criminal conduct.

c. No one other than the person operating, maintaining, leasing or otherwise holding an interest in the demonstration project pursuant to an agreement with the public partner has the right to enforce any agreement for defense or indemnification between that person and the public partner.

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

C.27:1A-5 Additional functions, powers, duties of commissioner.

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

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

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

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

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

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

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

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

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

- (1) Providing copies of documents prepared by or in the custody of the department;
- (2) Aeronautics permits;
- (3) Right-of-way permits;

(4) Traffic signal control systems;

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

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

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

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

11. Section 2 of P.L.1986, c.56 (C.27:1A-5.1) is amended to read as follows:

C.27:1A-5.1 Rail freight authority.

2. The commissioner, pursuant to subsection (i) of section 5 of P.L.1966, c.301 (C.27:1A-5), may:

a. Plan, design, construct, equip, operate, improve and maintain, either directly or by contract with any public or private entity, a railroad, subway, street traction or electric railway, or connecting roadways and facilities for the purpose of carrying freight in this State or between this State and points in other states;

b. Acquire by purchase, condemnation, lease, gift or otherwise, on terms and conditions and in the manner he deems proper, any land or property, real or personal, tangible or intangible, which he may determine is reasonably necessary for the purposes of this section;

c. Lease as lessor, sell or otherwise dispose of, on terms and conditions which he may prescribe as appropriate, real and personal property, including tangible or intangible property and consumable goods; or any interest therein, to any public or private entity in the exercise of his powers and the performance of his duties under this section, and may, in order to provide or encourage adequate and efficient rail freight service, lease or otherwise permit the use or occupancy of property without cost or at a nominal rental;

d. Upon declaration by him that there are no other prospects for competitive bidding, make, negotiate or award any purchase, contract or agreement pursuant to this section without advertisement.

12. Section 5 of P.L.1979, c.150 (C.27:25-5) is amended to read as follows:

C.27:25-5 Powers and duties of corporation.

5. In addition to the powers and duties conferred upon it elsewhere in this act, the corporation may do all acts necessary and reasonably incident to carrying out the objectives of this act, including but not in limitation thereof the following:

a. Sue and be sued;

b. Have an official seal and alter the same at pleasure;

c. Make and alter bylaws for its organization and internal management and for the conduct of its affairs and business;

d. Maintain an office at such place or places within the State as it may determine;

e. Adopt, amend and repeal such rules and regulations as it may deem necessary to effectuate the purposes of this act, which shall have the force and effect of law; it shall publish the same and file them in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) with the Director of the Office of Administrative Law;

f. Call to its assistance and avail itself of the service of such employees of any federal, State, county or municipal department or agency as it may require and as may be available to it for said purpose;

g. Apply for, accept and expend money from any federal, State, county or municipal agency or instrumentality and from any private source; comply with federal statutes, rules and regulations, and qualify for and receive all forms of financial assistance available under federal

law to assure the continuance of, or for the support or improvement of public transportation and as may be necessary for that purpose to enter into agreements, including federally required labor protective agreements;

h. Plan, design, construct, equip, operate, improve and maintain, either directly or by contract with any public or private entity, public transportation services, capital equipment and facilities or any parts or functions thereof, and other transportation projects, or any parts or functions thereof, which may be funded under section 3 of the federal Urban Mass Transportation Act of 1964, Pub.L.88-365 (49 U.S.C. s.1602), or any successor or additional federal act having substantially the same or similar purposes or functions; the operation of the facilities of the corporation, by the corporation or any public or private entity, may include appropriate and reasonable limitations on competition in order that maximum service may be provided most efficiently to the public;

i. Apply for and accept, from appropriate regulatory bodies, authority to operate public transportation services where necessary;

j. Purchase, lease as lessee, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, from any public or private entity, wherever situated;

k. Lease as lessor, sell or otherwise dispose of on terms which the corporation may prescribe, real and personal property, including tangible or intangible property and consumable goods, or any interest therein, to any public or private entity, in the exercise of its powers and the performance of its duties under this act. In order to provide or encourage adequate and efficient public transportation service, the corporation may lease or otherwise permit the use or occupancy of property without cost or at a nominal rental;

l. Restrict the rights of persons to enter upon or construct any works in or upon any property owned or leased by the corporation, except under such terms as the corporation may prescribe; perform or contract for the performance of all acts necessary for the management, maintenance and repair of real or personal property leased or otherwise used or occupied pursuant to this act;

m. Establish one or more operating divisions as deemed necessary. Upon the establishment of an operating division, there shall be established a geographically coincident advisory committee to be appointed by the Governor with the advice and consent of the Senate. The committee shall consist of county and municipal government representatives and concerned citizens, in the number and for such terms as may be fixed by the corporation, and shall advise the corporation as to the public transportation service provided in the operating division. At least two members of each advisory committee shall be public transportation riders, including but not limited to urban transit users and suburban commuters as appropriate. One public member from the board of the corporation shall serve as a liaison to each advisory committee;

n. Set and collect fares and determine levels of service for service provided by the corporation either directly or by contract including, but not limited to, such reduced fare programs as deemed appropriate by the corporation; revenues derived from such service may be collected by the corporation and shall be available to the corporation for use in furtherance of any of the purposes of this act;

o. Set and collect rentals, fees, charges or other payments from the lease, use, occupancy or disposition of properties owned or leased by the corporation; such revenues shall be available to the corporation for use in furtherance of any of the purposes of this act;

p. Deposit corporate revenues in interest bearing accounts or in the State of New Jersey Cash Management Fund established pursuant to section 1 of P.L.1977, c.281 (C.52:18A-90.4);

q. Delegate to subordinate officers of the corporation such powers and duties as the corporation shall deem necessary and proper to carry out the purposes of this act;

r. Procure and enter into contracts for any type of insurance and indemnify against loss or damage to property from any cause, including loss of use and occupancy, against death or injury of any person, against employees' liability, against any act of any member, officer, employee or servant of the corporation, whether part-time, full-time, compensated or noncompensated, in the performance of the duties of his office or employment or any other insurable risk. In addition, the corporation may carry its own liability insurance;

s. Promote the use of public transportation services, coordinate ticket sales and passenger

information and sell, lease or otherwise contract for advertising in or on the equipment or facilities of the corporation;

t. Adopt and maintain employee benefit programs for employees of the corporation including, but not limited to, pension, deferred compensation, medical disability, and death benefits, and which programs may utilize insurance contracts, trust funds, and any other appropriate means of providing the stipulated benefits, and may involve new plans or the continuation of plans previously established by entities acquired by the corporation;

u. Own, vote, and exercise all other rights incidental to the ownership of shares of the capital stock of any incorporated entity acquired by the corporation pursuant to the powers granted by this act;

v. Enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the corporation, or to carry out any power expressly or implicitly given in this act;

w. Notwithstanding the provisions of section 17 of P.L.1979, c.150 (C.27:25-17) or any other law to the contrary, (1) issue operating grant anticipation notes which shall be secured and retired from operating assistance grants authorized under section 9 of the federal Urban Mass Transportation Act of 1964, Pub.L.88-365 (49 U.S.C. s.1602), or any successor or additional federal act having substantially the same or similar purposes or functions and (2) issue capital grant anticipation notes which shall be secured and retired from capital assistance grants authorized under section 3 or section 9 of the federal Urban Mass Transportation Act of 1964, Pub.L.88-365 (49 U.S.C. s.1602), or any successor or additional federal act having substantially the same or similar purposes or functions. As used in this subsection, "operating grant anticipation notes" or "capital grant anticipation notes" (hereinafter referred to as "notes") means credit obligations issued in anticipation of these grants. The notes shall be authorized by a resolution or resolutions of the corporation, and may be issued in one or more series and shall bear the date, or dates, bear interest at the rate or rates of interest per annum, be in the denomination or denominations, be in the form, carry the conversion or registration privileges, have the rank or priority, be executed in such manner as the resolution or resolutions require. The notes may be sold at public or private sale at the price or prices and in the manner that the corporation determines. The notes of the corporation, the sale or transfer thereof, and the income derived therefrom by the purchasers of the notes, shall, at all times, be free from taxation for State or local purposes, under any law of the State or any political subdivision thereof. Notes may be issued under the provisions of P.L.1979, c.150 (C.27:25-1 et seq.) without obtaining the consent of any department, division, commission, board, bureau or agency of the State, and without any other proceedings, conditions, or things which are specifically required by P.L.1979, c.150 (C.27:25-1 et seq.). The notes issued pursuant to P.L.1979, c.150 (C.27:25-1 et seq.) shall not in any way create or constitute any indebtedness, liability or obligation of the State or of any political subdivision thereof or of the corporation, except as provided herein.

The notes shall be payable solely from (1) note proceeds, to the extent not disbursed to the corporation, (2) grant payments if, as, and when received from the federal government, and (3) investment earnings on note proceeds, to the extent not disbursed to the corporation. Each note shall contain on its face a statement to the effect that the corporation is obligated to pay the principal thereof or the interest thereon only from these grants to the corporation and from the proceeds of the notes and investment earnings on the proceeds of the notes, to the extent not disbursed to the corporation, and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof or of the corporation is pledged to the payment of the principal and interest on these notes. Neither the members of the corporation's board nor any person executing the transactions are personally liable on those notes nor are they otherwise liable for their actions; and

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

13. Section 12 of P.L.1995, c.108 (C.27:1B-21.5) is amended to read as follows:

C.27:1B-21.5 Duties of commissioner, loans, conditions; reports.

12. a. Notwithstanding the provisions of any other law to the contrary, the commissioner is authorized to enter into agreements with public or private entities or consortia thereof for the loan of federal funds appropriated to the department for the purpose of financing all, or a portion of, the costs incurred for the planning, acquisition, engineering, construction, reconstruction, repair and rehabilitation of a transportation project by that public or private entity or consortia thereof.

b. The commissioner, with the approval of the State Treasurer, shall establish rules and regulations governing the qualifications of the applicants, the application procedures, the criteria for awarding loans, and the standards for establishing the amount, terms and conditions of each loan. The rules and regulations shall provide that the term of the loan agreement shall be consistent with terms and conditions as provided by applicable federal law.

c. Loans granted pursuant to this section shall be considered an investment or reinvestment of Special Transportation Fund funds within the meaning of subsection a. of section 21 of P.L.1984, c.73 (C.27:1B-21). Payments of interest and principal on loans granted pursuant to this section shall be credited to a special subaccount of the Special Transportation Fund and may be used for financing authorized projects. Monies appropriated from the special subaccount pursuant to this section shall be in addition to the total State amount authorized to be appropriated in a fiscal year pursuant to section 8 of P.L.1987, c.460 (C.27:1B-21.1).

d. Each loan made pursuant to this section shall require the specific approval of the Joint Budget Oversight Committee, except for those loans agreed to by the commissioner as part of an agreement for a demonstration project approved pursuant to P.L.1997, c.136 (C.27:1D-1 et al.). The Chairman of the Joint Budget Oversight Committee may request periodic reports from the commissioner on the status of any or all loans. The commissioner shall provide reports so requested on a timely basis.

e. Transportation projects which are the subject of a loan agreement entered into pursuant to this section shall be included in the annual report of proposed projects prepared pursuant to section 22 of P.L.1984, c.73 (C.27:1B-22) for the fiscal year in which the loan amount for those projects is to be appropriated.

14. This act shall take effect immediately.

Approved June 27, 1997.