



**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** Yes

**FOLLOWING WERE PRINTED:**

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**REPORTS:** No

**HEARINGS:** Yes

Committee meeting of Senate Legislative Oversight Committee : the Committee will receive testimony from senior staff members of the Port Authority of New York and New Jersey, and other invited guests regarding the draft 2017-2026 Capital Plan, including the new Port Authority Bus Terminal, the Gateway Rail Tunnel, the PATH extension to Newark Airport, the redevelopment of Newark Terminal A, and other options to increase trans-Hudson capacity

[January 17, 2017, Trenton, New Jersey]

Call number: 974.90 T764, 2017

Available online at <http://hdl.handle.net/10929/41559>

Committee meeting of Senate Legislative Oversight Committee : the Committee will receive testimony from invited State and local government officials, transportation providers, and policy experts, and from the general public regarding the draft 2017-2026 Capital Plan, including the new Port Authority Bus Terminal, the Gateway Rail Tunnel, and the PATH extension to Newark Airport, the redevelopment of Newark Terminal A, and other options to increase trans-Hudson capacity

[January 30, 2017, Bergenfield, New Jersey]

Call number: 974.90 T764, 2017a

Available online at <http://hdl.handle.net/10929/41835>

Committee meeting of Assembly Transportation and Independent Authorities Committee : the Committee will take testimony from the Chairman of the Port Authority of New York and New Jersey Board of Commissioners concerning the Port Authority's draft 2017-2026 Capital Plan

[February 15, 2017, Trenton, New Jersey]

Call number 974.90 T764, 2017b

Available online at <http://hdl.handle.net/10929/41895>

Committee meeting of Senate Legislative Oversight Committee [and] Assembly Judiciary Committee : the Committees will receive testimony from invited guests, including Wick Moorman, President and Chief Executive Officer of Amtrak, Scott Naparstek, Vice President and Chief Operating Officer of Amtrak, and Steven Santoro, Executive Director of NJ Transit; The hearing will focus on the causes of the recent Amtrak derailments at Pennsylvania Station in New York and the NJ Transit train breakdown in the North River Tunnels; the responsibility for safety and maintenance on the Northeast Corridor Line; the response of both agencies to the commuter delays and overcrowding that resulted from the incidents; and the impact of the planned Gateway Project on trans-Hudson rail train capacity, safety, and service

[April 28, 2017 Trenton, New Jersey]

Call number: 974.90 R152, 2017

Available online at <http://hdl.handle.net/10929/42972>

Committee meeting of Senate Legislative Oversight Committee [and] Assembly Judiciary Committee : the Committees will receive testimony from invited guests, including senior staff members from NJ Transit, Amtrak, PATH, and New York Waterways. The meeting will focus on the summer renovation project at New York Penn Station, its impact on commuters, and the status of the Gateway Tunnel and Portal Bridge projects

[July 19, 2017, Trenton, New Jersey]

Call number: 974.90 T764, 2017f

Available online at <http://hdl.handle.net/10929/43457>

Committee meeting of Senate Legislative Oversight Committee [and] Assembly Judiciary Committee : the Committees will receive testimony concerning the Gateway Program and other Federal mass transit issues; the Committees will hear from John Porcari, Executive Director of the Gateway Development Corporation, and other invited guests

[September 25, 2017 Trenton, New Jersey]

Call number: 974.90 T764, 2017h

Available online at <http://hdl.handle.net/10929/44557>

**NEWSPAPER ARTICLES:**

Yes

“Andrew Cuomo, Phil Murphy sign Gateway law; delays persist on rail tunnels, bridge,” northjersey.com, July 22, 2019

“NJ, NY Governors sign gateway law to move project ahead,” The Record, July 23, 2019

“Lawmakers move to shield commuters from fees to fund Gateway tunnel,” NJBIZ, July 23, 2019

RWH/CL

Title 32.  
Subtitle 24. (New)  
Gateway Development Commission.  
Chapter 36. (New)  
Gateway Development Commission  
Established  
§§1-26 - C.32:36-1 to 32:36-26  
Chapter 37. (New)  
Other Laws Relating to Gateway  
Development Commission  
§§28 & 29 - C.32:37-1 & 32:37-2  
§30 - Note

**(CORRECTED COPY)**

P.L. 2019, CHAPTER 195, *approved July 22, 2019*  
Assembly Committee Substitute (*First Reprint*) for  
Assembly No. 5570

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

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate floor amendments adopted June 20, 2019.

1 economy of the Northeast Corridor; both states recognize the urgent  
2 need to undertake projects necessary to create passenger rail  
3 capacity under the Hudson River, rehabilitate passenger rail  
4 infrastructure, maintain current levels of long-distance and  
5 commuter rail service between the two states and provide additional  
6 reliability, safety and security; the citizens of both states will share  
7 the benefits of expanded capacity and rehabilitated passenger rail  
8 infrastructure between the two states; and there has been a long  
9 history of cooperation among state and local governmental entities,  
10 Amtrak, and various private organizations and individuals in the  
11 two states to ensure the preservation of a variety of passenger rail  
12 service options.

13 b. The legislature therefore determines that there is a need to  
14 endorse and formalize that bi-state cooperative effort to help ensure  
15 that the functionality of long-distance and commuter rail  
16 infrastructure between New Jersey and New York and thence  
17 throughout the Northeast Corridor, is preserved and maintained for  
18 the benefit of the economy of New Jersey and New York and for the  
19 well-being of present and future generations of citizens in both  
20 states; and that the creation of a bi-state commission that shall be a  
21 body corporate and politic established by the state of New Jersey  
22 and the state of New York, acting in the public interest and  
23 exercising essential governmental functions, is an appropriate  
24 means to accomplish these very important goals and is not intended  
25 to impair, limit, diminish, or otherwise affect any right, power, or  
26 jurisdiction of the United States of America or any department,  
27 branch, agency, court, bureau, or other instrumentality thereof with  
28 respect to any matter, or grant or confer any right or power on such  
29 bi-state commission, or any officer or trustee thereof, to regulate  
30 commerce between the states.

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

36

37 3. (New section) Definitions.

38 Except where different meanings are expressly specified in  
39 subsequent provisions of this section, the following terms shall have  
40 the following meanings:

41 "Act" means the Gateway Development Commission act.

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

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

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

1 "Facilitate" means the planning, designing, financing,  
2 acquisition, development, redevelopment, expansion, construction,  
3 reconstruction, replacement, approval of works, lease, leaseback,  
4 licensing, consigning, asset management, optimization,  
5 rehabilitation, repair, alteration, improvement, extension,  
6 management, ownership, use and effectuation of the matters  
7 described in this act. "Facilitation" shall have a concomitant  
8 meaning.

9 "Full Funding" means the sum of commitments to fund, from  
10 sources deemed by the Commission to be creditworthy, plus  
11 Commission cash-on-hand, plus any institution of a tariff or an  
12 agreement to impose user fees not subject to further approvals (if  
13 any), plus such other sources of funding deemed certain to be  
14 available as and when required, found by the Commission to be  
15 sufficient to facilitate the project or a discrete component thereof  
16 which is beneficial to the public.

17 "Meeting" means any gathering, whether corporeal or by means  
18 of communication equipment, which is attended by, or open to, the  
19 Board, held with the intent, on the part of the commissioners  
20 present, to act as a unit upon the specific public business of the  
21 Commission. "Meeting" does not mean a gathering (i) attended by  
22 less than a quorum of commissioners; (ii) in which the board is  
23 engaged in ordinary course supervision of Commission staff; (iii) in  
24 which consideration of Commission business matters are informally  
25 discussed without the intent or effect of effectuating any action of  
26 the Commission; or (iv) attended by or open to all the members of  
27 three or more similar public bodies at a convention or similar  
28 gathering.

29 "Project" means a passenger rail transportation project between  
30 Penn Station, Newark, New Jersey and Penn Station, New York,  
31 New York currently referred to as the "Gateway Program"  
32 consisting of:

33 phase one of the Project including: the replacement of the  
34 existing Portal Bridge; the construction of a tunnel connecting the  
35 states of New York and New Jersey and the completion of certain  
36 ancillary facilities including construction of concrete casing at  
37 Hudson Yards in Manhattan, New York; the rehabilitation of the  
38 existing North River Tunnels; all Projects necessary to connect the  
39 aforesaid Projects to the contiguous Amtrak Northeast Corridor  
40 Facilities; and

41 phase two of the Project including: the Portal South Bridge  
42 Project; the Sawtooth Bridge replacement Project; the Secaucus  
43 Loop Project; the Secaucus Junction renovation and expansion  
44 Project; and the Penn Station South Project, and other related  
45 Projects, but only if such phase two projects are authorized pursuant  
46 to a memorandum of understanding between the Governor of New  
47 York, the Governor of New Jersey and Amtrak.

1 "Public business" means matters which relate in any way,  
2 directly or indirectly, to the performance of the functions of the  
3 Commission or the conduct of its business.

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

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

13 (1) Facilitate the Project;

14 (2) Coordinate activities of governmental entities, Amtrak, and  
15 private entities providing assistance to the Project or otherwise  
16 regulating the Project, with a view to achieving full funding, and  
17 encourage and enable such parties to participate in the effectuation  
18 of the Project;

19 (3) act as a coordinating agency to arrange for cooperation  
20 among the federal government, the state of New Jersey, any local  
21 government thereof, the state of New York, any local government  
22 thereof, any agency, instrumentality, department, commission, or  
23 authority of any one or more of the foregoing, any bi-state agency,  
24 Amtrak, any individual or private firm, entity or corporation, or  
25 with any one or more of them (including by contract among the  
26 parties), for and in connection with the Facilitation of the Project  
27 for any of the purposes of this act, and to enter into an agreement or  
28 agreements (and from time to time to enter into agreements  
29 amending or supplementing the same) with the federal government,  
30 the state of New Jersey, any local government thereof, the state of  
31 New York, any local government thereof, any agency,  
32 instrumentality, department, commission, or authority of any one or  
33 more of the foregoing, any bi-state agency, Amtrak, any individual  
34 or private firm, entity or corporation, or with any one or more of  
35 them, for or relating to such purposes, including but not limited to  
36 agreements with respect to financial assistance, loans, grants or any  
37 other funding as may be available for the Project. The Commission  
38 is hereby intended to qualify for, authorized, and empowered to  
39 apply for and accept, financial assistance, loans, grants, or any other  
40 funding for such purposes under federal, state, or local laws, and to  
41 make application directly to the appropriate officials or agencies for  
42 the application for and receipt of federal, state or local assistance,  
43 loans, grants or any other funding in aid of any of the purposes of  
44 this act;

45 (4) pursue efforts to assist federal or state agencies and other  
46 entities to fulfill their goals set forth in federal law or the laws of

1 New York or New Jersey to further passenger rail transportation  
2 between states including 49 U.S.C. s.24901 et seq.;

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

9 (6) facilitate the Project by making and enforcing such rules and  
10 regulations; and

11 (a) accepting, collecting, and receiving funds pursuant to the  
12 provisions of the memorandum of understanding established  
13 pursuant to section 20 of this act, which may include bonded  
14 revenues, state appropriations, dedicated revenues, and any other  
15 funds or revenues made available pursuant to that memorandum of  
16 understanding, and using those funds to provide for the financing,  
17 construction or asset management of the project and the payment of,  
18 with interest upon, and the amortization and retirement of bonds or  
19 other securities or obligations issued or insured for Project  
20 purposes, including establishment of prudent reserves, in the same  
21 manner that all funds or revenues included in the memorandum of  
22 understanding established pursuant to section 20 of this act may be  
23 used for such purposes; and

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

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

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

35 (iii) may be used to provide for the payment of, with interest  
36 upon, and the amortization and retirement of bonds or other  
37 securities or obligations issued or insured for Project purposes,  
38 including establishment of prudent reserves, in the same manner  
39 that all funds or revenues included in the memorandum of  
40 understanding established pursuant to section 20 of this act may be  
41 used for such purposes;

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

44 (v) that may be directly or indirectly levied or imposed on or  
45 payable by the New Jersey Transit Corporation shall be expressly  
46 and specifically authorized pursuant to the memorandum of  
47 understanding established pursuant to section 20 of this act, or any



1 amendment thereto, and that the revenue from any toll or fee shall  
2 count toward the state share of funding pursuant to the  
3 memorandum of understanding.

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

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

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

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

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

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

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

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

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

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

38 b. Officers. The officers of the Commission shall include a  
39 chief executive officer, a general counsel, a chief financial officer, a  
40 chief ethics and compliance officer, and inspector general whom  
41 shall be appointed by the Commission. Such officers shall not be  
42 required to be established until the Commission is in receipt of  
43 necessary federal funding for purposes of facilitating the Project.

44  
45 5. (New section) Board of commissioners.

46 a. The Commission shall consist of seven commissioners: three  
47 from the state of New York, three from the state of New Jersey, and

1 one directly appointed by Amtrak. The commissioner appointed by  
2 Amtrak shall serve to represent Amtrak's interest, as owner-operator  
3 or user of the Northeast Corridor, in the work to be undertaken by  
4 the Commission. The New York commissioners shall be appointed  
5 by the state of New York and the New Jersey commissioners shall  
6 be appointed by the state of New Jersey in the manner determined  
7 pursuant to the laws of each respective state. Any commissioner  
8 appointed to the board shall have experience in one or more of the  
9 following areas: transportation, public administration, business  
10 management, finance, accounting, law, engineering, land use, urban  
11 and regional planning, management of large capital projects, labor  
12 relations, or have experience in some other area of activity central  
13 to the mission of the Commission.

14 b. The term of each commissioner shall be three years. Each  
15 commissioner may be reappointed pursuant to the laws of the state  
16 from which the commissioner is appointed or, for the Amtrak  
17 appointee, pursuant to any rule or policy adopted by Amtrak. A  
18 commissioner may automatically continue to serve following the  
19 expiration of that commissioner's term until a successor is  
20 appointed and seated unless such action is prohibited by the laws of  
21 each respective state or, for the Amtrak appointee, any rule or  
22 policy adopted by Amtrak.

23 c. The governor of New York, governor of New Jersey, and  
24 Amtrak may remove a commissioner appointed by such office or  
25 entity for inefficiency, neglect of duty, or misconduct in office after  
26 giving him or her a copy of the charges against him or her and an  
27 opportunity to be heard, in person or by counsel in his or her  
28 defense, upon not less than ten days' notice.

29 d. At the conclusion of a commissioner's term, the  
30 commissioner may be reappointed for a successive three year term  
31 at the pleasure of the party who originally appointed that  
32 commissioner.

33 e. In the event that a commissioner ceases to serve before the  
34 stated expiration of the commissioner's term, the party that  
35 originally appointed the commissioner may appoint a replacement  
36 to serve out the remainder of the replaced commissioner's term and  
37 thereafter, the vacancy shall be filled as provided for in subsection  
38 a. of this section.

39 f. Commissioners shall serve without compensation, but the  
40 Commission may, within the limits of funds appropriated or  
41 otherwise made available to it, reimburse commissioners for actual  
42 expenses necessarily incurred in the discharge of their official  
43 duties.

44 g. The commissioners from the state of New Jersey and the  
45 commissioners from the state of New York shall be indemnified by  
46 the state of New Jersey and the state of New York, respectively, to

1 the same extent as such state indemnifies a public officer for any  
2 claim or judgment arising out of such public officer's official duties.

3 h. No commissioner, including a co-chairperson, shall serve as  
4 any other officer or employee of the Commission while serving as a  
5 commissioner.

6 i. Oath of Office. The commissioners shall promulgate a  
7 commissioner's oath of office in consultation with the chief ethics  
8 and compliance officer within ninety days of the effective date of  
9 this act. Each commissioner and officer shall also, before entering  
10 upon the duties of his or her office, take and subscribe the  
11 constitutional oath of office, consistent with the constitutions of  
12 both states where practicable, which shall be promulgated within  
13 ninety days of the effective date of this act. The oaths of office shall  
14 be filed in the office of the Commission within ninety days of such  
15 commissioner or officer taking office or ninety days after any such  
16 oath of office is promulgated if such promulgation has not occurred.

17 j. Commissioner Statement. At the time that a commissioner  
18 takes and subscribes the commissioner's oath of office, the  
19 commissioner shall execute a statement declaring that the  
20 commissioner understands the commissioner's independence and  
21 fiduciary obligation to perform duties and responsibilities to the  
22 best of the commissioner's abilities, in good faith and with proper  
23 diligence and care which an ordinarily prudent person in like  
24 position would use under similar circumstances and may take into  
25 consideration the views and policies of any elected officials or  
26 bodies and ultimately apply independent judgment in the best  
27 interest of the Commission, its mission, and the public, consistent  
28 with this enabling statute, mission, and by-laws of the Commission;  
29 and that the fiduciary duty to the Commission is derived from and  
30 governed by its mission.

31 k. Board Training. Individuals appointed to the board shall  
32 participate in training approved by the chief ethics and compliance  
33 officer regarding their legal, fiduciary, financial and ethical  
34 responsibilities as commissioners of the Commission within six  
35 months of appointment to the Commission. The commissioners  
36 shall participate in continuing training as may be required to remain  
37 informed of best practices, regulatory and statutory changes relating  
38 to the effective oversight of the management and financial activities  
39 of commissions or public authorities and adhere to the highest  
40 standards of responsible governance.

41 l. Recusals.

42 (1) A commissioner shall not vote on or participate in any board  
43 or committee discussions or decisions with respect to an item if the  
44 commissioner, a member of the commissioner's immediate family,  
45 or a business in which the commissioner has an interest, has a direct  
46 or indirect financial involvement that may reasonably be expected  
47 to impair the commissioner's objectivity or independent judgement

1 or that may reasonably create the appearance of impropriety. A  
2 commissioner shall report such a need for recusal to the general  
3 counsel when it arises. The public shall be informed of any recusals  
4 prior to any board action and the minutes shall clearly reflect that  
5 recusal.

6 (2) For the purposes of this paragraph:

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

8 "Interest" means: if the business organization is a partnership,  
9 the commissioner's immediate family is a partner or owner of ten  
10 percent or more of the assets of the partnership; or if the business  
11 organization is a corporation, the commissioner's immediate family  
12 owns or controls ten percent or more of the stock of the corporation,  
13 or serves as a director or officer of the corporation.

14 m. Financial Disclosure.

15 (1) Notwithstanding any provision of law to the contrary, the  
16 commissioners, officers, and employees of the Commission shall  
17 file annual financial disclosure statements as provided in this  
18 paragraph.

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

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

25 (c) The commissioners appointed by Amtrak shall file annual  
26 financial disclosure statements consistent with laws, rules,  
27 regulations, and policies associated with filings of financial  
28 disclosures by Amtrak employees and officers.

29 (d) Financial disclosures of officers and employees shall, at a  
30 minimum, be required of officers and employees who hold policy-  
31 making positions as determined by the commission, and officers  
32 and employees whose base salary, either in the current or previous  
33 year, exceeds \$150,000, which shall be adjusted for inflation  
34 annually in accordance with the consumer price index for all urban  
35 wage earners and clerical workers (CPI-W) as calculated by the  
36 federal government.

37

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

39 a. The co-chairpersons of the commission shall serve from  
40 among the commissioners appointed by the state of New Jersey and  
41 the commissioners appointed by the state of New York and shall  
42 include one co-chairperson from New Jersey and one co-  
43 chairperson from New York. The commissioner who shall serve as  
44 co-chairperson from each state shall be decided in accordance with  
45 the laws of each respective state or if the respective state has no  
46 laws related to the selection of a co-chairperson then as elected by  
47 the commissioners appointed from each respective state.

- 1       b. The commission shall meet regularly as it may determine.  
2 Meetings shall be held at such times and places as the co-  
3 chairpersons of the commission deem appropriate. To the maximum  
4 extent practicable, meetings shall be held on an alternating basis in  
5 New Jersey and New York.
- 6       c. The powers of the Commission may be exercised by the  
7 commissioners at a meeting duly called and held where at least two  
8 New York commissioners, two New Jersey commissioners, and the  
9 Amtrak commissioner are present. Action may be taken and  
10 motions and resolutions adopted by the Commission at any meeting  
11 thereof by the affirmative vote of at least two New York  
12 commissioners, two New Jersey commissioners, and the Amtrak  
13 commissioner. The commissioners shall adopt bylaws providing for  
14 attendance protocols, voting procedures, and other matters related  
15 to the conduct of the business of the Commission, including  
16 designating officers of the Commission.
- 17       d. The Commission may request the assistance and services of  
18 such employees and agents as it may require and as may be made  
19 available to it for the purpose of carrying out its duties under this  
20 act, which agents may include private consultants and persons  
21 employed by or acting as a consultant for the federal government,  
22 the state of New Jersey, any local government thereof, the state of  
23 New York, any local government thereof, any agency,  
24 instrumentality, department, commission or authority of any one or  
25 more of the foregoing, any bi-state agency, or of Amtrak, and each  
26 such government and enumerated party is authorized to provide any  
27 such assistance and services to the Commission.
- 28       e. The Commission may, within the limits of funds  
29 appropriated or otherwise made available to it for those purposes,  
30 employ such professional, technical, clerical staff and consultants  
31 and incur such expenses as it may deem necessary or appropriate in  
32 order to perform its duties.
- 33       f. The Commission shall:
- 34       (1) adopt a mission statement that shall include facilitating and  
35 completing the Project;
- 36       (2) adopt a code of conduct applicable to commissioners,  
37 officers, employees, and vendors and other contractors with the  
38 Commission that shall, at minimum, include applicable standards  
39 established by law in each state;
- 40       (3) no later than January thirtieth, two thousand twenty,  
41 establish a whistleblower access and assistance program protecting  
42 employees from retaliation for disclosing information concerning  
43 acts of wrongdoing, misconduct, malfeasance, or other  
44 inappropriate conduct based upon the recommendations of the chief  
45 ethics and compliance officer;
- 46       (4) establish a policy requiring all commissioners, officers, and  
47 employees with decision-making authority to maintain records

1 regarding contact with lobbyists. As used in this paragraph,  
2 "contact" means any conversation, in person or by telephonic or  
3 other electronic means, or correspondence between any lobbyist  
4 engaged in the act of lobbying and any person within the  
5 Commission who can make or influence a decision on the subject of  
6 the lobbying on the behalf of the Commission, and shall include, at  
7 a minimum, all members of the board and all officers of the  
8 Commission, "lobbyist" shall have the same meaning as defined in  
9 the laws or, rules or regulations of either state, and "lobbying" shall  
10 mean and include any attempt to influence: the adoption or rejection  
11 of any rule or regulation having the force and effect of law by the  
12 Commission, the outcome of any proceeding by the Commission to  
13 establish, levy or collect fees, tolls, charges or fares, the  
14 authorization, approval or award of any agreements, contracts or  
15 purchase orders valued at \$500,000 or more; and

16 (5) have an efficiency study of the Commission and its  
17 operations conducted by an independent entity upon the request of  
18 the governors of New York and New Jersey, and if no request is  
19 made, no longer than every five years from initiation of Project  
20 construction.

21 g. Whistleblower Program.

22 (1) The chief ethics and compliance officer shall recommend to  
23 the board a whistleblower access and assistance program to be  
24 administered by the inspector general that shall include, but not be  
25 limited to:

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

28 (b) offering advice regarding employee rights under applicable  
29 state and federal laws and advice and options available to all  
30 persons; and

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

33 (2) Any communication between an employee and the inspector  
34 general pursuant to this subsection shall be held strictly confidential  
35 by the inspector general, unless the employee specifically waives in  
36 writing the right to confidentiality, except that such confidentiality  
37 shall not exempt the inspector general from disclosing such  
38 information, where appropriate, to the board and/or any law  
39 enforcement authority.

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

44 (4) As used in this subsection:

45 "Employees" means those persons employed at the Commission,  
46 including but not limited to: full-time and part-time employees,

1 those employees on probation, temporary employees, officers, and  
2 commissioners.

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

10 h. Inspector General.

11 (1) The inspector general shall be responsible for receiving and  
12 investigating, where appropriate, all complaints regarding fraud,  
13 waste, and abuse by commissioners, officers, and employees or  
14 third-parties doing business with the Commission. The inspector  
15 general shall also be responsible for conducting investigations upon  
16 the inspector general's own initiative, as the inspector general shall  
17 deem appropriate.

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

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

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

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

34 (a) administer oaths or affirmations and examine witnesses  
35 under oath;

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

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

41 (d) interview any officer or employee of the Commission or its  
42 subsidiaries on any matter related to the performance of such officer  
43 or employee's official duties. To the extent that the terms and  
44 conditions of employment of any employee are established by  
45 collective negotiations, any interview conducted pursuant to this  
46 paragraph must be in accordance with any applicable provisions of  
47 the current, or most recent, if expired, collective negotiations

1 agreement covering the terms and conditions of employment of the  
2 employee;

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

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

7 i. Open Meetings.

8 (1) All meetings of the Commission shall be open to the public  
9 and members of the news media, individually and collectively, for  
10 the purpose of observing the full details of all phases of the  
11 deliberation, policy-making, and decision-making of the board,  
12 except for an executive session initiated upon a majority vote taken  
13 in an open meeting pursuant to a motion. Such motion shall identify  
14 the general nature of the subjects to be considered in the closed,  
15 executive session and, if it is not to take place immediately, state, as  
16 closely as possible the time and circumstances for such session and  
17 when the matters discussed or acted upon may be disclosed. The  
18 board may exclude the public only from that portion of a meeting at  
19 which the board discusses any:

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

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

24 (c) collective bargaining agreement, or the terms and conditions  
25 which are proposed for inclusion in any collective bargaining  
26 agreement, including the negotiation of the terms and conditions  
27 thereof with employees or representatives of employees of the  
28 Commission;

29 (d) matter involving the purchase, lease, or acquisition of real  
30 property with Commission funds, the proposed acquisition of  
31 securities, the sale or exchange of securities held by the  
32 Commission, or the investment of Commission funds, if public  
33 discussion of the matter would adversely affect the public interest;

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

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

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

43 (h) matter involving the employment, appointment, termination  
44 of employment, terms and conditions of employment, evaluation of  
45 the performance of, promotion or disciplining of any specific  
46 prospective officer or employee or current officer or employee  
47 employed or appointed by the Commission, unless all the individual



1 employees or appointees whose rights could be adversely affected  
2 request in writing that the matter or matters be discussed at a public  
3 meeting;

4 (i) deliberation of the Commission occurring after a public  
5 hearing that may result in the imposition of a specific civil penalty  
6 upon the responding party or the suspension or loss of a license or  
7 permit belonging to the responding party as a result of an act or  
8 omission for which the responding party bears responsibility; or

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

12 (2) The Commission shall make meeting agendas available to  
13 the public at least seventy-two hours before each meeting of the  
14 board and each meeting of any committee. Public notice of the time  
15 and place of a meeting shall be provided to appropriate media  
16 outlets, shall be conspicuously posted in one or more designated  
17 areas, and shall be conspicuously posted via the Commission's  
18 official website at least five business days before the meeting.

19 (3) The Commission shall make available to the public  
20 documents in the following manner: the agenda and public  
21 documents pertaining to a board meeting shall be available for  
22 public inspection at least 72 hours before each meeting or as soon  
23 as practicable at an office of the Commission; and the agenda and  
24 public documents pertaining to a board or committee meeting shall  
25 be posted on the Commission's website.

26 (4) At each public meeting of the Commission, the public shall  
27 be allotted thirty minutes, or a reasonable time as determined by the  
28 Commission, in order to allow any persons in attendance an  
29 opportunity to comment on any topic on the agenda.

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

40 (6) Attendance at an executive session shall be permitted to any  
41 member of the Commission and any other persons authorized by the  
42 Commission.

43 (7) The Commission shall adopt and promulgate appropriate  
44 bylaws, rules, or regulations concerning the rights of the public to  
45 be present at meetings of the Commission. Any rules, regulations,  
46 or bylaws adopted hereunder shall become part of the minutes of  
47 the Commission and be posted on the Commission's website.

1       j. Meeting Notice. The board shall, within six months of the  
2 effective date of this act, adopt appropriate policies concerning  
3 proper notice to the public and the news media of its meetings and  
4 the right of the public and the news media to be present at meetings  
5 of the Commission. The board may incorporate in its policies  
6 conditions under which it may exclude the public from a meeting or  
7 a portion thereof consistent with this act.

8       k. Freedom of Information.

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

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

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

22       (4) The Commission shall adopt and promulgate appropriate  
23 bylaws, rules, or regulations concerning the rights of the public to  
24 obtain records of the commissioner's activities or public business.  
25 Any rules, regulations, or bylaws adopted hereunder shall become  
26 part of the minutes of the Commission and be posted on the  
27 Commission's website.

28       l. Legislative hearings.

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

40       (2) The Assembly or Senate of the New York state legislature or  
41 the General Assembly or Senate of the New Jersey legislature may  
42 request attendance at such hearing of any named officer of the  
43 Commission.

44  
45       7. (New section) Duties of the Commission.

46       The duties of the Commission shall be to use its efforts to  
47 accomplish, at such times as it is appropriate to do so, the following

- 1 actions, provided that the Commission shall not be in dereliction of  
2 its duties so long as it acts in good faith to accomplish such:
- 3 a. Make appropriate application for, and act as a coordinating,  
4 distributing, or recipient agency for, federal, state, or private  
5 funding and authorizations necessary or appropriate to Facilitate the  
6 Project;
- 7 b. Cooperate with other agencies or authorities or departments  
8 (federal, state, local, and bi-state), Amtrak, and private parties to  
9 Facilitate the Project, including entering into agreements specifying  
10 a party's rights and obligations with respect to the Project, to create  
11 a Project capable of achieving long-term stability and Full Funding,  
12 without obligating the full faith and credit of the federal  
13 government, either state or any local government thereof, or any  
14 other party, except as explicitly authorized by any party empowered  
15 by law to do so;
- 16 c. Adopt bylaws to govern the conduct of its affairs, and adopt  
17 rules and regulations, including a conflict of interest policy and  
18 code of ethics for commissioners and officers of the Commission,  
19 and make appropriate orders to carry out and discharge its powers,  
20 duties, and functions;
- 21 d. Expend such funds as are required to effectuate the purposes  
22 set forth in this section and, until expenditure is required, to hold  
23 and prudently invest funds;
- 24 e. Recommend appropriate federal, state, and local government  
25 legislation and agency administrative action pertaining to the  
26 Project;
- 27 f. Within 18 months of the date the Commission organizes and  
28 not less than annually thereafter, prepare a progress report on its  
29 activities, and submit it, together with any recommendations for  
30 state or local government legislation or agency administrative  
31 action to the governor of the state of New Jersey, the president of  
32 the senate of the state of New Jersey, the speaker of the general  
33 assembly of the state of New Jersey, the governor of the state of  
34 New York, the temporary president of the senate of the state of New  
35 York, and the speaker of the assembly of the state of New York;  
36 and
- 37 g. Take such other action as may be necessary or appropriate to  
38 further the purposes of this act.  
39
- 40 8. (New section) Powers of the Commission. The Commission  
41 shall have the power to undertake the following:
- 42 a. Facilitate the project, including, but not limited to, through  
43 contracts and agreements and other documents and instruments  
44 which the Commission is otherwise authorized to make, enter into,  
45 execute, and deliver; provided, however, that the Commission shall  
46 not have the authority to operate or directly engage in transportation

- 1 services such that the Commission would be subject to the  
2 jurisdiction of the federal Surface Transportation Board;
- 3 b. Sue and be sued in its own name in federal and state courts  
4 in Mercer county, New Jersey and New York county, New York, it  
5 being understood that the commissioners shall have no obligation or  
6 liability for the acts or omissions of the commission;
- 7 c. Accept, receive, disburse, encumber and expend funds from  
8 whatever source derived, including, without limitation, federal  
9 assistance, grants and loans; state and local government assistance,  
10 grants and loans; single state or bi-state agency assistance, grants  
11 and loans; and revenues received from the disposition of property;  
12 private sources, grants and loans; and Amtrak grants and loans, in  
13 each case as may be necessary to accomplish any lawful purpose  
14 which the commissioners determine will Facilitate the Project and  
15 achieve long-term stability and Full Funding;
- 16 d. Acquire (including, without limitation, by gift, purchase,  
17 exchange or condemnation in accordance with the requirements of  
18 this act), subdivide, lease, license, take, and hold property of every  
19 description and to manage such property and develop any  
20 undeveloped property owned, leased, or controlled by it in a manner  
21 necessary or appropriate to Facilitate the Project;
- 22 e. Make, procure, enter into, execute and deliver contracts and  
23 agreements and other documents and instruments as may be  
24 necessary or appropriate to carry out any power of the Commission  
25 under this act and to otherwise accomplish any lawful purpose  
26 which the commissioners determine will Facilitate the Project,  
27 including, without limitation, with the federal government, the state  
28 of New Jersey, any local government thereof, the state of New  
29 York, with any local government thereof, with any agency,  
30 instrumentality, department, commission or authority of any one or  
31 more of the foregoing, any bi-state agency, Amtrak, any individual  
32 or private firm, entity or corporation, or with any one or more of  
33 them;
- 34 f. Make applications for and accept funding, permits,  
35 authorizations and approvals as may be necessary or appropriate to  
36 accomplish any lawful purpose which the commissioners determine  
37 will Facilitate the Project, including, without limitation, with the  
38 federal government, the state of New Jersey, any local government  
39 thereof, the state of New York, any local government thereof, with  
40 any agency, instrumentality, department, commission or authority  
41 of any one or more of the foregoing, any bi-state agency, Amtrak,  
42 any individual or private firm, entity or corporation, or with any one  
43 or more of them;
- 44 g. Grant public and private entities the use of the Project or a  
45 portion thereof by way of franchise, concession, license, lease, or  
46 otherwise, provide for payments to and accept payments from such  
47 entities in exchange for value received from such use, work, or

1 services performed or otherwise and to establish with Project users  
2 revenue sharing agreements for the use of the Project, through  
3 which the Commission may accept a portion of tolls, fees, rates,  
4 charges, and rentals established, levied, and collected by a Project  
5 user, provided that such tolls, fees, rates, charges, and rentals do not  
6 conflict with applicable federal law, the laws of the state of New  
7 Jersey and the state of New York, and paragraph (6) of subsection  
8 a. of section 4 of this act, and provided further that the Commission  
9 shall not have the authority to set passenger fares for Amtrak or any  
10 publicly owned and operated passenger service utilizing the Project;

11 h. In accordance with section 16 of this act, adopt its own  
12 public procurement rules and guidelines that the Commission deems  
13 necessary or appropriate to Facilitate the Project through any  
14 combination of means and methods otherwise available to the  
15 Commission under this act, regardless of whether such combination  
16 is generally available to the state of New Jersey, any local  
17 government thereof, the state of New York, any local government  
18 thereof, any agency, instrumentality, department, commission or  
19 authority of any one or more of the foregoing, or any bi-state  
20 agency, and engage and contract with third parties in accordance  
21 with such procurement rules and guidelines;

22 i. In accordance with section 18 of this act, dispose of, convey  
23 or transfer all or any portion of the Project for value as may be  
24 expeditious for the Facilitation of the Project, so long as it has  
25 determined that the transferee has or is provided with a sufficient  
26 source of financing to acquire, operate, maintain and own the  
27 Project;

28 j. Issue and guarantee bonds, notes, or other evidence of  
29 indebtedness, enter into loan agreements and otherwise borrow  
30 funds, or incur indebtedness or other future payment obligations for  
31 any corporate purpose, including to effectuate Full Funding, and to  
32 assign, pledge, mortgage, secure, encumber and use its funds,  
33 assets, properties, and revenues for repayment thereof, to be  
34 payable out of the funds, assets, properties, and revenues of the  
35 Commission without recourse to taxation, provided that the  
36 Commission shall have no power to pledge the full faith and credit  
37 of the federal government, the state of New Jersey, any local  
38 government thereof, the state of New York, any local government  
39 thereof or of Amtrak or the Port Authority of New York and New  
40 Jersey in connection with the project, or to impose any obligation  
41 for payment of the bonds upon the federal government, the state of  
42 New Jersey, any local government thereof, the state of New York,  
43 any local government thereof or of Amtrak or the Port Authority of  
44 New York and New Jersey, in each case except as set forth in a  
45 binding agreement, or to otherwise commit any party to incur any  
46 liability in excess of its contractual obligations in connection with  
47 the Project, and provided further that neither the commissioners nor

- 1 any person executing any bonds issued or guaranteed by the  
2 Commission shall be liable personally on such bonds or be subject  
3 to any personal liability or accountability by reason of the issuance  
4 thereof;
- 5 k. Acquire and hold securities for investment purposes or in  
6 connection with the Facilitation of the Project;
- 7 l. Appoint, employ, contract with, and compensate such  
8 officers, employees and agents, including engineers, attorneys,  
9 consultants, financial advisors, and such other persons or entities as  
10 the business of the Commission may require and to engage and  
11 dismiss such officers, employees, and agents at will, and fix and  
12 provide for the qualification, appointment, removal, term, tenure,  
13 compensation, pension, and retirement rights of its officers and  
14 employees;
- 15 m. Obtain insurance as the Commission may deem advisable  
16 and to create a captive insurer to self-insure risk as deemed  
17 appropriate by the Commission;
- 18 n. Cooperate with the federal government, the state of New  
19 Jersey, any local government thereof, the state of New York, any  
20 local government thereof, with any agency, instrumentality,  
21 department, commission or authority of any one or more of the  
22 foregoing, any bi-state agency, Amtrak, any individual or private  
23 firm, entity or corporation, or with any one or more of them, in  
24 connection with the Project, and to enter into an agreement or  
25 agreements, notwithstanding any other provision of law of the  
26 states, general, special, charter or local, with the federal  
27 government, with the state of New Jersey, any local government  
28 thereof, the state of New York, any local government thereof any  
29 agency, instrumentality, department, commission, or authority of  
30 any one or more of the foregoing, any bi-state agency, Amtrak, any  
31 individual or private firm, entity, or corporation, or with any one or  
32 more of the same for or relating to the Project;
- 33 o. Indemnify individuals and entities to the extent required to  
34 facilitate the project;
- 35 p. Establish or acquire subsidiaries as required to Facilitate the  
36 Project;
- 37 q. Utilize the existing labor force in the states and foster labor  
38 harmony in allowing for adoption of efficient labor work rules and  
39 practices during construction of the Project; and
- 40 r. Exercise all other powers as may be necessary or appropriate  
41 in furtherance of, and consistent with, the purposes of this act.  
42
- 43 9. (New section) Exemption from taxes, local laws.
- 44 a. The Commission shall be performing essential governmental  
45 functions in exercising its powers and functions and in carrying out  
46 the provisions of this act and of any law relating thereto, and shall  
47 not be required to pay any taxes or assessments of any character,

1 levied by either state or any local government thereof, upon any of  
2 the property used by it or its agents or contractors for the  
3 Facilitation of the Project, or any income or revenue therefrom,  
4 including any profit from a sale, lease or exchange, or in connection  
5 with the transfer thereof or of any real property interest therein.  
6 Any bonds or other securities or obligations issued by the  
7 Commission, their transfer and the interest paid thereon or income  
8 therefrom, including any profit from a sale or exchange, shall at all  
9 times be free from taxation by either state or any subdivision  
10 thereof.

11 b. The Commission shall, as a matter of policy, conform to the  
12 enactments, ordinances, resolutions, and regulations of the  
13 respective states and local governments where the Project is located  
14 in regard to the construction and maintenance of the Project and in  
15 regard to health and fire protection which would be applicable if the  
16 Commission were a private corporation, to the extent that the  
17 Commission finds it practicable so to do, without interfering with,  
18 impairing, or affecting the efficiency of its purposes under this act,  
19 or its ability to effectuate the Project upon a self-supporting basis,  
20 or its obligations, duties, and responsibilities to the two states, its  
21 bondholders, if any, and the general public, but the decision of the  
22 Commission as to whether it is practicable so to do shall be  
23 controlling. To that end, the Commission shall submit copies of  
24 plans and specifications for buildings and structures to the  
25 appropriate state and local government officials and shall consult  
26 with them with respect thereto, and shall receive their comments  
27 and suggestions thereon, but the Commission shall make the final  
28 determination as to which comments and suggestions to accept in  
29 effectuating the project.

30 c. Notwithstanding the provisions of subsection a. of this  
31 section, the Commission is hereby authorized and empowered, in its  
32 discretion, to enter into a voluntary agreement or agreements with  
33 any local government whereby the Commission may undertake to  
34 pay in lieu of taxes a fair and reasonable sum, if any, annually in  
35 connection with any real property acquired and owned by the  
36 Commission for any of the purposes of this act, and to provide for  
37 the payment as a rental or additional rental charge by any person  
38 occupying any portion of such real property as lessee, vendee or  
39 otherwise of such fair and reasonable sum, provided that in no event  
40 shall any voluntary agreement entered into by the commission  
41 provide for the payment of an amount in lieu of taxes in excess of  
42 the amount last paid as taxes upon such real property prior to the  
43 time of its acquisition by the Commission.

44 d. Notwithstanding any other provision of law, general, special,  
45 charter, or local, each local government is hereby authorized and  
46 empowered to enter into such agreement or agreements with the  
47 Commission, and to accept the payment or payments which the

1 Commission is hereby authorized and empowered to make, and the  
2 sums so received by such local government shall be devoted to  
3 purposes to which taxes may be applied in all affected taxing  
4 jurisdictions unless and until otherwise directed by law of the state  
5 in which such local government is located.

6  
7 10. (New section) Commission annual financial reporting.

8 The Commission shall publish a comprehensive annual financial  
9 report, submitted annually to the governors and state legislatures of  
10 New York and New Jersey and made available on the Commission's  
11 website within 120 days after the end of its fiscal year. The annual  
12 report shall include:

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

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

43 c. a corporate information section providing: a list of all real  
44 property of the Commission; a list and full description of real  
45 property and personal property that has a sale price of over \$10,000  
46 disposed of during the period, including the price received by the  
47 Commission and the name of the purchaser for all property sold by



1 the Commission during the period; a compensation schedule that  
2 shall include, by position, title and name of the person holding such  
3 position or title, the salary, compensation, allowance and/or benefits  
4 provided to any officer, director, or employee in a decision making  
5 or managerial position of such Commission whose base salary is in  
6 excess of \$150,000; biographical information, not including  
7 confidential personal information, for all directors and officers and  
8 employees for whom salary reporting is required; a description of  
9 the Commission and its board structure, including names of any  
10 committees and committee members, lists of board meetings and  
11 attendance, descriptions of major Commission units and  
12 subsidiaries, and number of employees; its mission statement,  
13 charter, if any, and by-laws; and a description of any material  
14 pending litigation in which the Commission is involved as a party  
15 during the reporting year.

16

17 11. (New section) Commission audits and financial statements.

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

22 b. The board shall arrange for an independent firm of certified  
23 public accountants to perform an audit of the financial statements of  
24 the Commission each year, in accordance with generally accepted  
25 accounting principles and standards referenced in subsection a. of  
26 this section. Each independent firm of certified public accountants  
27 that performs any audit required by this section shall timely report  
28 to the board:

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

30 (2) other material written communications, that is not privileged  
31 or confidential, between the independent firm of certified public  
32 accountants and the management of the Commission, including the  
33 management letter along with management's response or plan of  
34 corrective action, material corrections identified, or schedule of  
35 unadjusted differences.

36 c. Every financial statement prepared pursuant to this section  
37 shall be approved by the board. As a condition to the issuance of the  
38 annual financial statements of the Commission, the chief executive  
39 officer and the chief financial officer of the Commission shall be  
40 required to make a written certification that, to the best of their  
41 knowledge and belief, the financial and other information in the  
42 consolidated financial statements is accurate in all material respects  
43 and has been reported in a manner designed to present fairly the  
44 Commission's net assets, changes in net assets, and cash flows, in  
45 accordance with generally accepted accounting principles and  
46 standards referenced in subsection a. of this section; and, that on the  
47 basis that the cost of internal controls should not outweigh their

1 benefits, the Commission has established a comprehensive  
2 framework of internal controls to protect its assets from loss, theft,  
3 or misuse, and to provide reasonable assurance regarding the  
4 reliability of financial reporting and the preparation of the  
5 consolidated financial statements in accordance with generally  
6 accepted accounting principles and standards referenced in  
7 subsection a. of this section.

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

15 e. The Commission shall not contract with the independent  
16 firm of certified public accountants performing the Commission's  
17 audit for any non-audit services to such Commission  
18 contemporaneously with the audit including:

19 (1) bookkeeping or other services related to the accounting  
20 records or financial statements of such Commission;

21 (2) financial information systems design and implementation;

22 (3) appraisal or valuation services, fairness opinions, or  
23 contribution-in-kind reports;

24 (4) actuarial services;

25 (5) internal audit outsourcing services;

26 (6) management functions or human services;

27 (7) broker or dealer, investment advisor, or investment banking  
28 services; and

29 (8) legal services and expert services unrelated to the audit.

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

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

42

43 12. (New section) Debt issuance.

44 a. The issuance of any bonds, notes, or other instruments of  
45 indebtedness by the Commission shall be undertaken in a manner  
46 consistent with applicable laws governing the Commission and

1 covenants with the holders of the commission's bonds, notes, or  
2 other instruments of indebtedness.

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

8

9 13. (New section) Capital plan.

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

32 b. The Commission shall also provide that major capital  
33 Projects are monitored by external engineering consultants. The  
34 external engineering consultants shall prepare annual reports to be  
35 provided to the board and made available to the public. The annual  
36 reports prepared by external engineering consultants shall include,  
37 but not be limited to, a comparison of actual and target performance  
38 measures including, but not limited to, costs and construction  
39 schedules, and a narrative explanation of any discrepancy thereof.  
40 For the purposes of this section: "Major capital Project" means an  
41 undertaking or program for the acquisition, creation, or  
42 development of any crossing, transportation facility, or commerce  
43 facility or any part thereof, with an estimated total Project cost in  
44 excess of \$500,000,000.

45

46 14. (New section) Operating budget. The Commission shall  
47 prepare a detailed annual operating budget beginning with the fiscal

1 year commencing after the effective date of this act. A preliminary  
2 annual operating budget shall be made publicly available on the  
3 Commission's website each fiscal year and a final annual operating  
4 budget shall be made publicly available on the Commission's  
5 website each fiscal year. The time with which such preliminary  
6 annual operating budget and final annual operating budget shall be  
7 made public during each fiscal year shall be determined by the  
8 Commission.

9  
10 15. (New section) a. The minutes of every meeting of the  
11 Gateway Development Commission held under or within the  
12 purview of this act shall be forthwith transmitted, by and under the  
13 certification of the Commission thereof, to the Governor of each  
14 state. No action taken at such meeting by any commissioner  
15 appointed from each respective state shall have force or effect for a  
16 period of ten days, Saturdays, Sundays, and public holidays  
17 excepted, after the minutes shall have been so transmitted and  
18 delivered unless the respective Governor shall finally approve the  
19 minutes or any part thereof, reciting any such action, within said  
20 ten-day period.

21 b. Each Governor shall, within ten days, exclusive of  
22 Saturdays, Sundays, or public holidays, after the minutes shall have  
23 been so delivered, cause the same to be returned to the Gateway  
24 Development Commission either with or without his veto on any  
25 action therein recited as having been taken by any commissioner  
26 appointed from the Governor's respective state. If the Governor  
27 does not return the minutes within said ten-day period, any action  
28 therein recited as having been taken at such meeting by any  
29 commissioner appointed from the Governor's respective state shall  
30 have force and effect according to the wording thereof.

31  
32 16. (New section) Contracts of the Commission.

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

35 "Construction item" means any such item or material used in  
36 construction and which is procured directly by the Commission or  
37 office or any such item or material commonly used in construction  
38 which is procured by a person, other than a municipality, under  
39 contract with the commission.

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

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

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

9 "Specification" means any description of the physical or  
10 functional characteristics, or of the nature of a material, supply,  
11 equipment or construction item. It may include a description of any  
12 requirement for inspecting, testing or preparing a material, supply,  
13 equipment or construction item for delivery.

14 b. Specifications. The Commission shall create and update  
15 product specifications to ensure that:

16 (1) Specifications do not exclude the use of products  
17 manufactured from secondary materials or require that products be  
18 manufactured from virgin materials only, provided however, the  
19 specifications may include such an exclusion if the Commission  
20 demonstrates that for a particular end use a product containing  
21 secondary materials would not meet necessary performance  
22 standards or that the cost of such products exceeds that of similar  
23 products manufactured from virgin materials.

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

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

28 (4) Specifications incorporate or require the use of secondary  
29 materials to the maximum extent practicable without jeopardizing  
30 the performance or intended end use of the product; provided  
31 however, where the Commission demonstrates that for a particular  
32 end use a product containing secondary materials would not meet  
33 necessary performance standards or that the cost of such product  
34 exceeds that of similar products manufactured from virgin  
35 materials, such specifications need not incorporate or require the  
36 use of secondary materials.

37 c. Ground for cancellation of contract by the Commission. A  
38 clause shall be inserted in all specifications or contracts hereafter  
39 made or awarded by the Commission, for work or services  
40 performed or to be performed or goods sold or to be sold, to provide  
41 that upon the refusal by a person, when called before a grand jury,  
42 head of a state department, temporary state Commission or other  
43 agency of the state of New York or the state of New Jersey, the  
44 organized crime task force in the department of law of the state of  
45 New York, head of a city department, or other city agency, which is  
46 empowered to compel the attendance of witnesses and examine  
47 them under oath, to testify in an investigation concerning any

1 transaction or contract had with the applicable state, any political  
2 subdivision thereof, a public authority or with any public  
3 department, agency or official of the state of New York or the state  
4 of New Jersey or of any political subdivision thereof or of a public  
5 authority, to sign a waiver of immunity against subsequent criminal  
6 prosecution or to answer any relevant question concerning such  
7 transaction or contract, such person, and any firm, partnership or  
8 corporation of which he or she is a member, partner, director or  
9 officer shall be disqualified from thereafter selling to or submitting  
10 bids to or receiving awards from or entering into any contracts with  
11 the Commission or official thereof, for goods, work or services, for  
12 a period of five years after such refusal.

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

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

19 e. Removal of disqualification of public contractors by  
20 petition.

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

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

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

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

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

17 f. Statement of non-collusion in bids or proposals to the  
18 Commission.

19 (1) Every bid or proposal hereafter made to the Commission or  
20 to any official of the Commission, where competitive bidding is  
21 utilized, for work or services performed or to be performed or  
22 goods sold or to be sold, shall contain the following statement  
23 subscribed by the bidder and affirmed by such bidder as true under  
24 the penalties of perjury:

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

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

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

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

41 (2) A bid shall not be considered for award nor shall any award  
42 be made where the provisions of paragraph (1) of this subsection  
43 have not been complied with; provided however, that if in any case  
44 the bidder cannot make the foregoing certification, the bidder shall  
45 so state and shall furnish with the bid a signed statement which sets  
46 forth in detail the reasons therefor. Where the provisions of  
47 paragraph (1) of this subsection have not been complied with, the



1 bid shall not be considered for award nor shall any award be made  
2 unless the Commission or official thereof determines that such  
3 disclosure was not made for the purpose of restricting competition.  
4 The fact that a bidder (a) has published price lists, rates, or tariffs  
5 covering items being procured, (b) has informed prospective  
6 customers of proposed or pending publication of new or revised  
7 price lists for such items, or (c) has sold the same items to other  
8 customers at the same prices being bid, does not constitute, without  
9 more, a disclosure.

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

19 g. Procurement contracts.

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

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

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

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

- 1 "Professional firm" means any individual or sole proprietorship,  
2 partnership, corporation, association, or other legal entity permitted  
3 by law to practice the professions of architecture, engineering, or  
4 surveying.
- 5 "Women-owned business enterprise" means a business  
6 enterprise, including a sole proprietorship, partnership or  
7 corporation: with more than fifty percent of the ownership interest  
8 owned by one or more United States citizens or permanent resident  
9 aliens who are women or, in the case of a publicly-owned business,  
10 where more than fifty percent of the common stock or other voting  
11 interests is owned by United States citizens or permanent resident  
12 aliens who are women; in which the ownership interest of women is  
13 real, substantial, and continuing; in which the women ownership  
14 has and exercises the authority to control independently the day-to-  
15 day business decisions of the enterprise; and authorized to do  
16 business in the state of New York or the state of New Jersey,  
17 independently owned and operated, and not dominant in its field.
- 18 "Procurement contracts" means any written agreement for the  
19 acquisition of goods or services of any kind, in the actual or  
20 estimated amount of five thousand dollars or more.
- 21 (2) The Commission shall adopt by resolution comprehensive  
22 guidelines which detail the Commission's operative policy and  
23 instructions regarding the use, awarding, monitoring and reporting  
24 of procurement contracts. Such guidelines shall be annually  
25 reviewed and approved by the Commission.
- 26 (3) The guidelines approved by the Commission shall include,  
27 but not be limited to the following:
- 28 (a) A description of the types of goods purchased, and for  
29 procurement contracts for services, a description of those areas of  
30 responsibility and oversight requiring the use of personal services  
31 and the reasons for the use of personal services in such areas.
- 32 (b) Requirements regarding the selection of contractors, which  
33 shall include provisions:
- 34 (i) for the selection of such contractors on a competitive basis,  
35 and provisions relating to the circumstances under which the board  
36 may by resolution waive competition; and
- 37 (ii) setting forth responsibilities of contractors.
- 38 (c) An identification of those areas or types of contracts for  
39 which minority or women-owned business enterprises may best bid  
40 so as to promote and assist participation by such enterprises and  
41 facilitate a fair share of the awarding of contracts to such  
42 enterprises.
- 43 (d) Requirements for providing notice, in addition to any other  
44 notice of procurement opportunities, to professional and other  
45 organizations that serve minority and women-owned business  
46 enterprises providing the types of services procured by the  
47 Commission.

1 (e) The establishment of appropriate goals for participation by  
2 minority or women-owned business enterprises in procurement  
3 contracts awarded by the Commission and for the utilization of  
4 minority and women-owned enterprises as subcontractors and  
5 suppliers by entities having procurement contracts with the  
6 Commission.

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

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

14 (h) Policies to promote the participation by business enterprises  
15 and residents of the state of New York and the state of New Jersey  
16 in procurement contracts.

17 (4) For the purposes of this subsection:

18 "New Jersey business enterprise" means a business enterprise,  
19 including a sole proprietorship, partnership, or corporation, which  
20 offers for sale or lease or other form of exchange, goods which are  
21 sought by the Commission and which are substantially  
22 manufactured, produced or assembled in New Jersey, or services  
23 which are sought by the Commission and which are substantially  
24 performed within New Jersey.

25 "New Jersey resident" means a natural person who maintains a  
26 fixed, permanent, and principal home located within New Jersey  
27 and to which such person, whenever temporarily located, always  
28 intends to return.

29 "New York resident" means a natural person who maintains a  
30 fixed, permanent and principal home located within New York state  
31 and to which such person, whenever temporarily located, always  
32 intends to return.

33 "New York state business enterprise" means a business  
34 enterprise, including a sole proprietorship, partnership, or  
35 corporation, which offers for sale or lease or other form of  
36 exchange, goods which are sought by the Commission and which  
37 are substantially manufactured, produced or assembled in New  
38 York state, or services which are sought by the Commission and  
39 which are substantially performed within New York state.

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

43 (6) The Commission shall annually prepare and approve a report  
44 on procurement contracts, where any such contracts have been  
45 entered into for such year, which shall include the guidelines, as  
46 specified in this section, an explanation of the guidelines and any  
47 amendments thereto since the last annual report. Such report on

1 procurement contracts may be a part of any other annual report that  
2 the corporation is required to make.

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

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

16

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

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

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

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

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

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

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

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

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

39 d. Sixty days prior to the issuance of any debt by the subsidiary  
40 corporation, or the Commission on behalf of the subsidiary  
41 corporation, the Commission shall in addition to any other  
42 requirements concerning the issuance of debt by the Commission,  
43 provide notice to the governor of each state, and the majority leader  
44 of each house of the legislature of each state. For purposes of this  
45 section, as applicable to New York state "majority leader" shall  
46 mean the speaker of the assembly of the New York state legislature  
47 or temporary president of the senate of the New York state

1 legislature. For purposes of this section, as applicable to the state of  
2 New Jersey "majority leader" shall mean the president of the senate  
3 or the speaker of the general assembly of the state of New Jersey.

4

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

6 a. Any sale of real property by the Commission shall be  
7 undertaken and conducted pursuant to the provisions of the existing  
8 laws governing the sale of real property by the Commission in the  
9 state in which such real property is located and by approval of the  
10 board.

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

19 c. Disposal of real property for less than fair market value. No  
20 property owned, leased, or otherwise in the control of the  
21 Commission may be sold, leased, or otherwise alienated for less  
22 than its fair market value unless:

23 (1) the transferee is a government or other public entity, and the  
24 terms and conditions of the transfer require that the ownership and  
25 use of the real property will remain with the government or any  
26 other public entity; or

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

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

39 (1) a full description of the property;

40 (2) a description of the purpose of the disposition, acquisition,  
41 or transfer;

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

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

46 (5) in the case of a property disposition for less than fair market  
47 value, an explanation and a written determination by the board that

1 there is no reasonable alternative to the proposed below-market  
2 value that would achieve the same purpose of such disposition.

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

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

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

25  
26 19. (New section)

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

37 b. The comptrollers of the respective states acting individually  
38 or collectively shall report to the governors and the legislatures of  
39 the respective states the result of such examination.

40  
41 20. (New section) State commitment. The state of New Jersey  
42 and the state of New York shall provide equal funding for phase one  
43 of the Project. To the extent that the Port Authority of New York  
44 and New Jersey provides support for debt service obligations  
45 incurred by the Commission for phase one, the value of that support  
46 will be ascribed one-half each to the state of New York and the  
47 state of New Jersey in determining their total funding for the state

1 commitment to phase one. The governor of New Jersey, the  
2 governor of New York and the executive director of the Port  
3 Authority shall execute a memorandum of understanding detailing  
4 the timing and source of funding for their commitment to phase one  
5 of the Project, and if agreed to in an amendment to a memorandum,  
6 for phase two of the Project or portions thereof.

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

12

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

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

29

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

37

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

45 a. suits, actions, or proceedings upon any causes of action  
46 whatsoever accruing before the effective date of this act;

1       b. suits, actions or proceedings upon any causes of action  
2 whatsoever, upon, in connection with, or arising out of any contract,  
3 express or implied, entered into or assumed by or assigned to the  
4 Commission before the effective date of this act (including any  
5 supplement to, or amendment, extension or renewal of any such  
6 contract, even if such supplement, amendment, extension or  
7 renewal is made on or after the effective date of this act), regardless  
8 of whether such cause of action accrued before or after that date;

9       c. civil suits, actions or proceedings for the recovery of  
10 statutory penalties; and

11       d. suits, actions or proceedings for judgments, orders or  
12 decrees restraining, enjoining or preventing the Commission from  
13 committing or continuing to commit any act or acts, other than  
14 suits, actions or proceedings by the Attorney General of New Jersey  
15 or by the Attorney General of New York, each of whom is hereby  
16 authorized to bring such suits, actions or proceedings in his or her  
17 discretion on behalf of any person or persons whatsoever who  
18 requests the Attorney General to do so, except in the cases  
19 otherwise excluded by this act; provided, that in any such suit,  
20 action or proceeding, no judgment, order or decree shall be entered  
21 except upon at least two days' prior written notice to the  
22 Commission of the proposed entry thereof.

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

27  
28       24. (New section) The Commission shall dissolve following a  
29 joint determination by the Governor of New Jersey and the  
30 Governor of New York that the Project has been completed or  
31 should be transferred to another agency, instrumentality or entity  
32 and:

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

37       Amtrak is not unduly prejudiced by such dissolution.

38  
39       25. (New section) Section 1 through section 24 of this act  
40 establishing the "Gateway Development Commission Act" may be  
41 amended, altered, supplemented, or repealed from time to time  
42 through the enactment of law by one state concurred in through the  
43 enactment of law in the other state.

44  
45       26. Severability. a. If any provision of this act or the  
46 application thereof to any person or circumstance is held invalid,  
47 including as not in accordance with federal law or federal



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

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

8  
9 27. Section 5 of P.L.1966, c.301 (C.27:1A-5) is amended to read  
10 as follows:

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

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

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

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

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

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

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

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

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

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

45 (2) Aeronautics permits;

46 (3) Right-of-way permits;

47 (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

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

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

15

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

20 b. The three commissioners shall be appointed <sup>1</sup>【in the  
21 following manner:

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

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

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

27 The members appointed pursuant to paragraphs (2) and (3) of  
28 this subsection shall be appointed before the Governor appoints a  
29 member pursuant to paragraph (1) of this subsection】 by the  
30 Governor, with the advice and consent of the Senate<sup>1</sup>.

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

38 d. All vacancies in the office of commissioner of the Gateway  
39 Development Commission shall be filled <sup>1</sup>【in the same manner as  
40 the original appointment】 pursuant to the provisions of subsection  
41 b. of this section<sup>1</sup>.

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

45 f. All commissioners from this State shall continue to hold  
46 office after the expiration of the terms for which they are appointed

1 and until their respective successors are appointed and qualified.  
2 No period during which any such commissioner shall hold over  
3 shall be deemed to be an extension of the commissioner's term of  
4 office for the purpose of computing the date on which a successor's  
5 term expires.

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

12 h. The New Jersey co-chairperson of the Gateway  
13 Development Commission, whose position is established pursuant  
14 to P.L. , c. (C. ) (pending before the Legislature as this bill),  
15 shall be selected from the three New Jersey commissioners of the  
16 Gateway Development Commission appointed pursuant to this  
17 section and shall be determined by the affirmative vote of at least  
18 two of the New Jersey commissioners <sup>1</sup>; provided, however, that the  
19 New Jersey co-chairperson shall be a resident voter of the State of  
20 New Jersey at the time of selection and shall have been a resident  
21 voter of the State of New Jersey for at least the two years  
22 immediately preceding selection as co-chairperson.

23 i. Notwithstanding the requirements of subsection c. of this  
24 section, the Governor may appoint the individual serving as trustee  
25 of the Gateway Program Development Corporation, a New Jersey  
26 nonprofit corporation, at the time of the effective date of P.L. , c.  
27 (C. ) (pending before the Legislature as this bill), as a  
28 commissioner of the Gateway Development Commission and such  
29 individual may be seated without the advice and consent of the  
30 Senate<sup>1</sup>.

31  
32 29. (New section) The Commission shall be immune from  
33 liability in the State of New Jersey in the same manner and to the  
34 same extent as is the State of New Jersey under the provisions of  
35 the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., and the  
36 "New Jersey Contractual Liability Act," N.J.S.59:13-1 et seq.

37  
38 30. a. Section 1 through section 25 of this act shall take effect  
39 upon the enactment into law by the state of New York of legislation  
40 having an identical effect with section 1 through section 25 of this  
41 act, but if the state of New York shall have already enacted such  
42 legislation, section 1 through section 25 of this act shall take effect  
43 immediately. Section 26 through section 29 shall take effect when  
44 section 1 through section 25 of this act take effect; provided that the  
45 legislative bill drafting commission for the State of New York shall  
46 notify the Legislative Counsel of the New Jersey Office of  
47 Legislative Services upon the occurrence of the enactment by the

1 state of New York of the legislation referenced in this act in order  
2 that the office may maintain an accurate and timely effective  
3 database of the official text of the laws of the State of New Jersey;  
4 and further provided that the Gateway Development Commission  
5 shall notify the Legislative Counsel of the New Jersey Office of  
6 Legislative Services upon the occurrence of the intended dissolution  
7 pursuant to section 24 of this act in order that the office may  
8 maintain an accurate and timely effective database of the official  
9 text of the laws of the state of New Jersey.

10 b. This act shall expire and be deemed repealed fifteen years  
11 from the effective date herein established, provided, however, that  
12 such repeal shall only occur if federal funding that is necessary for  
13 purposes of facilitating phase one of the Project has not been  
14 granted to the Gateway Development Commission; provided further  
15 that the Gateway Development Commission shall notify the  
16 Legislative Counsel of the New Jersey Office of Legislative  
17 Services upon the occurrence of the repeal of the legislation  
18 provided for in this act in order that the Legislative Counsel of the  
19 New Jersey Office of Legislative Services may maintain an accurate  
20 and timely effective database of the official text of the laws of the  
21 state of New Jersey.

22 c. Any amendments to subsection b. of this section shall take  
23 effect only upon the enactment into law by the state of New York of  
24 legislation having an identical effect, but if the state of New York  
25 shall have already enacted such legislation, any amendments to  
26 subsection b. of this section shall take effect immediately.

27

28

29

30

31 Establishes Gateway Development Commission with certain  
32 powers and responsibilities.

# ASSEMBLY, No. 5570

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JUNE 13, 2019

**Sponsored by:**

**Assemblyman CRAIG J. COUGHLIN**

**District 19 (Middlesex)**

**Assemblyman DANIEL R. BENSON**

**District 14 (Mercer and Middlesex)**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**Assemblyman JON M. BRAMNICK**

**District 21 (Morris, Somerset and Union)**

**Co-Sponsored by:**

**Assemblymen Karabinchak, Johnson and Rooney**

**SYNOPSIS**

Establishes Gateway Development Commission with certain powers and responsibilities.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/14/2019)**

A5570 COUGHLIN, BENSON

2

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) This act shall be known and may be cited as  
9 the “Gateway Development Commission Act.”

10

11 2. (New section) Gateway Development Commission.

12 a. The Legislature finds and declares that: the State of New  
13 Jersey and the State of New York and their respective citizens share  
14 a common interest to preserve the functionality and strengthen the  
15 resiliency of long-distance and commuter rail infrastructure  
16 between New Jersey and New York, including passenger rail  
17 infrastructure owned, controlled, or utilized by the National  
18 Railroad Passenger Corporation, also known as “Amtrak”; the two  
19 states and their respective citizens share the benefits of the existing  
20 interstate passenger rail infrastructure between the two states,  
21 including the existing North River Tunnel; interstate passenger rail  
22 service and infrastructure is vital to the economies of New Jersey  
23 and New York; because of the passage of time and damage caused  
24 by natural disasters, both states recognize the existing interstate  
25 passenger rail infrastructure, including the existing North River  
26 Tunnel, is at risk of system failures that could result in prolonged  
27 service disruptions that would severely damage the economies of  
28 the two states and many other portions of the economy of the  
29 Northeast Corridor; both states recognize the urgent need to  
30 undertake projects necessary to create additional 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 the state of New  
42 Jersey and the State of New York shall equally divide the financial  
43 burdens that constitute the local share of the total costs of the  
44 Gateway Program, with 50 percent of the local share to be paid by  
45 each state, and further determines that there is a need to endorse and

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

**Matter underlined thus is new matter.**

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

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

23

24 3. (New section) Definitions.

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

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

32 "Board" means the Board of Commissioners of the Commission.

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

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

41 "Facilitate" or "facilitation" means the planning, designing,  
42 construction, reconstruction, replacement, approval of works,  
43 rehabilitation, repair, alteration, improvement, extension, and  
44 management of matters directly associated with the Gateway  
45 Program.

46 "Full Funding" means the sum of commitments to fund, from  
47 sources deemed by the Commission to be creditworthy, plus  
48 Commission cash-on-hand, plus such other sources of funding



1 deemed certain to be available as and when required, found by the  
2 Commission to be sufficient to Facilitate the Gateway Program.

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

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

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

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

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

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

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

47 “Portal North Bridge project” means a project to replace the  
48 existing Portal Bridge over the Hackensack River between Secaucus

1 and Kearny, New Jersey with a new, high-level, two-track fixed rail  
2 bridge.

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

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

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

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

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

27

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

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

36 (1) Facilitate the Gateway Program;

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

44 (3) Act as a lead agency for the Facilitation of the Gateway  
45 Program and to act as the recipient of all Gateway Program funds  
46 and as the project lead for all component projects of the Gateway  
47 Program, unless one of the other partner agencies or entities is  
48 designated as the project sponsor. The Commission is hereby

1 intended to qualify for, authorized, and empowered to apply for and  
2 accept, financial assistance, loans, grants, or any other funding for  
3 such purposes under federal, state, or local laws, and to make  
4 application directly to the appropriate officials or agencies for the  
5 application for and receipt of federal, state, or local assistance,  
6 loans, grants, or any other funding in aid of any of the purposes of  
7 P.L. , c. (C. ) (pending before the Legislature as this bill);

8 (4) Pursue efforts to assist federal or state agencies and other  
9 entities to fulfill their goals set forth in federal law or the laws of  
10 the State of New York or the State of New Jersey to further  
11 passenger rail transportation between the states, including 49 U.S.C.  
12 s.24901 et seq.; and

13 (5) Take any and all actions authorized by P.L. , c. (C. )  
14 (pending before the Legislature as this bill) which are or may be  
15 necessary or appropriate to constitute and maintain itself as an  
16 applicant eligible to qualify to apply for and be awarded financial  
17 assistance, loans, grants, or other funding as may be available for  
18 the Gateway Program, including that awarded by federal, state, and  
19 local governments and the agencies thereof.

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

26

27 5. (New section) Board of Commissioners.

28 a. The Commission shall consist of nine commissioners, three  
29 resident voters from the State of New York, three resident voters  
30 from the State of New Jersey, and three individuals appointed  
31 directly by the Amtrak board of directors. The commissioners  
32 appointed by Amtrak shall serve to represent Amtrak's interest, as  
33 owner-operator of the Northeast Corridor, in the work to be  
34 undertaken by the Commission. The New York commissioners  
35 shall be chosen by the state of New York and the New Jersey  
36 commissioners shall be chosen by the state of New Jersey in the  
37 manner and for the terms fixed and determined from time to time by  
38 the legislature of each state respectively. Any commissioner  
39 appointed to the board shall have experience in one or more of the  
40 following areas: transportation, public administration, business  
41 management, finance, accounting, law, engineering, land use, urban  
42 and regional planning, management of large capital projects, labor  
43 relations, or have experience in some other area of activity central  
44 to the mission of the Commission.

45 b. Commissioners shall serve without compensation, but the  
46 Commission may, within the limits of funds appropriated or  
47 otherwise made available to it, reimburse commissioners for actual

1 expenses necessarily incurred in the discharge of their official  
2 duties.

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

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

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

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

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

42 h. Board Training. Individuals appointed to the board of  
43 commissioners shall participate in training approved by the chief  
44 ethics and compliance officer in consultation with the inspector  
45 general of the Commission regarding their legal, fiduciary, financial  
46 and ethical responsibilities as commissioners of the Commission  
47 within six months of appointment to the Commission. The  
48 commissioners shall participate in continuing training as may be

1 required to remain informed of best practices, regulatory and  
2 statutory changes relating to the effective oversight of the  
3 management and financial activities of commissions or public  
4 authorities and adhere to the highest standards of responsible  
5 governance.

6 i. Recusals.

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

18 (2) For the purposes of this subsection:

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

21 "Interest" means: if the business organization is a partnership,  
22 the board member or board member's immediate family is a partner  
23 or owner of 10 percent or more of the assets of the partnership, or if  
24 the business organization is a corporation, the board member or the  
25 board member's immediate family owns or controls 10 percent or  
26 more of the stock of the corporation, or serves as a director or  
27 officer of the corporation.

28 j. Financial Disclosure.

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

33 (2) (a) The commissioners appointed by the State of New York  
34 shall file annual financial disclosure statements pursuant to section  
35 73-a of the public officers law.

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

39 (c) In addition to the financial disclosures required of the  
40 commissioners, financial disclosures of employees shall, at a  
41 minimum, be required of the chief executive officer, the general  
42 counsel, the comptroller, the treasurer, the inspector general,  
43 employees who hold policy-making positions as determined by the  
44 general counsel of the Commission, and employees whose base  
45 salary, either in the current or previous year, exceeds \$150,000,  
46 which shall be adjusted for inflation annually in accordance with  
47 the consumer price index for all urban wage earners and clerical  
48 workers (CPI-W) as calculated by the federal government. The

1 financial disclosures shall be updated not less than annually and  
2 shall be made available on the Commission's website.

3

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

5 a. The chairperson of the Commission shall serve from among  
6 the commissioners appointed by the state of New Jersey and the  
7 commissioners appointed by the state of New York. The initial  
8 chairperson shall be one of the commissioners appointed by the  
9 state of New York and shall serve a one-year term. Following the  
10 initial one-year term, the chairperson shall be one of the  
11 commissioners appointed by the state of New Jersey. Thereafter,  
12 the chairpersonship shall alternate between commissioners from  
13 each state with each chairperson serving for a one-year term. The  
14 commissioner who shall serve as chairperson from each state shall  
15 be decided in accordance with the laws of each respective state.  
16 One of the commissioners appointed by Amtrak shall serve as vice  
17 chairperson, at the discretion of the Amtrak board of directors.

18 b. The Commission shall meet regularly as it may determine.  
19 Meetings shall be held at such times and places as the chairperson  
20 of the Commission deems appropriate. To the maximum extent  
21 practicable, meetings shall be held on an alternating basis in New  
22 Jersey and New York.

23 c. The powers of the Commission may be exercised by the  
24 commissioners at a meeting duly noticed and held where a majority  
25 of commissioners are present. Each party to the Commission may  
26 cast one collective vote on any motion, resolution, or other action of  
27 the board. The commissioners appointed by the State of New York  
28 shall cast one collective vote in a manner determined by the laws of  
29 the State of New York. The commissioners appointed by the State  
30 of New Jersey shall cast one collective vote in a manner determined  
31 by the laws of the State of New Jersey. The commissioners  
32 appointed by the board of directors of Amtrak shall cast one  
33 collective vote in a manner determined by the Amtrak board of  
34 directors. Action may be taken and motions and resolutions  
35 adopted by the Commission at any meeting thereof only through the  
36 unanimous affirmative vote of each party to the Commission. Each  
37 state reserves the right to provide by law for the exercise of a veto  
38 power by the governor thereof over any action of any commissioner  
39 appointed therefrom. The commissioners shall adopt bylaws  
40 providing for attendance protocols, voting procedures, and other  
41 matters related to the conduct of business by the Commission.

42 d. Board Committees.

43 (1) The board of commissioners shall establish a committee  
44 structure that shall include, but need not be limited to, the following  
45 responsibilities:

46 (a) a governance responsibility to be assigned to a committee  
47 comprised of not fewer than three commissioners who shall possess  
48 the necessary skills to undertake the governance duties and

1 functions. Such committee shall be comprised of not fewer than  
2 one commissioner appointed by each appointing party. It shall be  
3 the responsibility of the members of this committee to: keep the  
4 board informed of current best governance practices; review  
5 corporate governance trends; update the commission's corporate  
6 governance principles; examine ethical and conflict of interest  
7 issues; perform board self-evaluations; investigate term limits,  
8 reappointments, and board responsibilities; develop by-laws which  
9 include rules and procedures for the conduct of board business; and  
10 advise the Commission on the skills and experiences required of  
11 potential commissioners;

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

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

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

40 e. 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  
43 P.L. , c. (C. ) (pending before the Legislature as this bill),  
44 which agents may include private consultants and persons employed  
45 by or acting as a consultant for the federal government, the State of  
46 New Jersey, any local government thereof, the State of New York,  
47 any local government thereof, any agency, instrumentality,  
48 department, commission, or authority of any one or more of the

1 foregoing, any bi-state agency, or of Amtrak, and each such  
2 government and enumerated party is authorized to provide any such  
3 assistance and services to the Commission.

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

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

15 h. The Commission shall:

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

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

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

29 (4) establish a policy requiring all commissioners, officers, and  
30 employees with decision-making authority to maintain records  
31 regarding contact with lobbyists. As used in this subsection:  
32 "contact" means any conversation, in person or by telephonic or  
33 other electronic means, or correspondence between any lobbyist  
34 engaged in the act of lobbying and any person within the  
35 Commission who can make or influence a decision on the subject of  
36 the lobbying on the behalf of the Commission, and shall include, at  
37 a minimum, all members of the board of commissioners and all  
38 officers of the Commission. "Lobbyist" shall have the same  
39 meaning as defined in the laws or, rules or regulations of either  
40 state, and "lobbying" shall mean and include any attempt to  
41 influence: the adoption or rejection of any rule or regulation having  
42 the force and effect of law by the Commission, the outcome of any  
43 proceeding by the Commission to establish, levy, or collect fees,  
44 tolls, charges, or fares, and the authorization, approval or award of  
45 any agreements, contracts, or purchase orders, including any  
46 settlement of Commission claims, or any extension, amendment, or  
47 modification of any existing agreement, contract, or order; and



1 (5) have an efficiency study of the Commission and its  
2 operations conducted by an independent entity upon the request of  
3 the governors of New York and New Jersey, and if no request is  
4 made, no longer than every three years.

5 i. Whistleblower program.

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

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

12 (b) offering advice regarding employee rights under applicable  
13 state and federal laws and advice and options available to all  
14 persons; and

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

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

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

28 (3) As used in this subsection:

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

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

39 j. Inspector General.

40 (1) The inspector general shall be responsible for receiving and  
41 investigating, where appropriate, all complaints regarding fraud,  
42 waste, and abuse by commissioners, officers, and employees of the  
43 Commission or third-parties doing business with the Commission.  
44 The inspector general shall also be responsible for conducting  
45 investigations upon the inspector general's own initiative, as the  
46 inspector general shall deem appropriate.

47 (2) The inspector general shall inform the board of  
48 commissioners and the chief executive officer of allegations

1 received by the inspector general and the progress of investigations  
2 related thereto, unless special circumstances require confidentiality.

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

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

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

15 administer oaths or affirmations and examine witnesses under  
16 oath;

17 require the production of any books and papers deemed relevant  
18 or material to any investigation, examination, or review;

19 notwithstanding any law to the contrary, examine and copy or  
20 remove documents or records of any kind prepared, maintained, or  
21 held by the Commission and its subsidiaries;

22 interview any officer or employee of the Commission or its  
23 subsidiaries on any matter related to the performance of such officer  
24 or employee's official duties. To the extent that the terms and  
25 conditions of employment of any employee are established by  
26 collective negotiations, any interview conducted pursuant to this  
27 paragraph must be in accordance with any applicable provisions of  
28 the current, or most recent, if expired, collective negotiations  
29 agreement covering the terms and conditions of employment of the  
30 employee;

31 monitor the implementation by the Commission of any  
32 recommendations made by the inspector general; and

33 perform any other functions that are necessary or appropriate to  
34 fulfill the duties and responsibilities of office.

35 k. Open Meetings.

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

1 matter in which the release of information would impair a right  
2 to receive funds from the government of the United States;  
3 material the disclosure of which would constitute an unwarranted  
4 invasion of individual or personal privacy;  
5 collective bargaining agreement, or the terms and conditions  
6 which are proposed for inclusion in any collective bargaining  
7 agreement, including the negotiation of the terms and conditions  
8 thereof with employees or representatives of employees of the  
9 Commission;  
10 matter involving the purchase, lease, or acquisition of real  
11 property with Commission funds, the proposed acquisition of  
12 securities, the sale or exchange of securities held by the  
13 Commission, or the investment of Commission funds, if public  
14 discussion of the matter would adversely affect the public interest;  
15 matter which would imperil the public safety if disclosed;  
16 pending or anticipated litigation or contract negotiation in which  
17 the Commission is, or may become, a party, or matters falling  
18 within the attorney-client privilege, to the extent that confidentiality  
19 is required for the attorney to exercise the attorney's ethical duties  
20 as a lawyer;  
21 contract negotiations disclosure of which would imperil the  
22 Commission's position or an outcome in the best interest of the  
23 Commission, its mission, and the public;  
24 matter involving the employment, appointment, termination of  
25 employment, terms and conditions of employment, evaluation of the  
26 performance of, promotion or disciplining of any specific  
27 prospective officer or employee or current officer or employee  
28 employed or appointed by the Commission, unless all the individual  
29 employees or appointees whose rights could be adversely affected  
30 request in writing that the matter or matters be discussed at a public  
31 meeting; or  
32 deliberation of the Commission occurring after a public hearing  
33 that may result in the imposition of a specific civil penalty upon the  
34 responding party or the suspension or loss of a license or permit  
35 belonging to the responding party as a result of an act or omission  
36 for which the responding party bears responsibility.  
37 (2) The Commission shall make meeting agendas available to  
38 the public at least 72 hours before each meeting of the board and  
39 each meeting of each committee. In addition, the Commission shall  
40 send via electronic mail the agenda and public documents  
41 pertaining to a board or committee meeting to the public  
42 information office of each state's legislature at least 72 hours before  
43 the meeting. Public notice of the time and place of a meeting shall  
44 be provided to appropriate media outlets, shall be conspicuously  
45 posted in one or more designated areas, and shall be conspicuously  
46 posted via the Commission's official website at least five business  
47 days before the meeting.

1 (3) The Commission shall make available to the public  
2 documents in the following manner: the agenda and public  
3 documents pertaining to a board or committee meeting shall be  
4 available for public inspection at least 72 hours before each meeting  
5 or as soon as practicable at an office of the Commission; and the  
6 agenda and public documents pertaining to a board or committee  
7 meeting shall be posted on the Commission's website.

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

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

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

32 m. Meeting Notice.

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

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

45 n. Freedom of Information.

46 Notwithstanding any law to the contrary, the Commission shall  
47 be deemed an "agency" and treated as such under the laws of New  
48 York, for all purposes under articles 6 and 6-A of the Public

1 Officers Law, and shall be deemed a "public agency" and treated as  
2 such under New Jersey, P.L.1963, c.73 (C.47:1A-1 et seq.),  
3 pertaining to the disclosure of government records.

4 o. Legislative hearings.

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

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

33

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

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

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

43 b. Serve as the lead agency responsible for cooperating with  
44 federal, state, local, and bi-state agencies, authorities, or  
45 departments, Amtrak, and private parties to Facilitate the Gateway  
46 Program, including entering into agreements specifying a party's  
47 rights and obligations with respect to the Gateway Program, to  
48 create a Gateway Program capable of achieving long-term stability

1 and Full Funding, without obligating the full faith and credit of the  
2 federal government, either state, or any local government thereof, or  
3 any other party, except as explicitly authorized by any party  
4 empowered by law to do so;

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

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

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

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

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

34

35 8. (New section) Powers of the Commission.

36 The Commission shall have the power to undertake the  
37 following:

38 a. Facilitate the Gateway Program, including, but not limited  
39 to, through contracts and agreements and other documents and  
40 instruments which the commission is otherwise authorized to make,  
41 enter into, execute, and deliver; provided, however, that the  
42 facilitation of the project within New York state shall be subject to  
43 article 8 of the New York state labor law, as well as be subject to  
44 sections 200, 240, 241, and 242 of the New York state labor law  
45 and enforcement of prevailing wage requirements pursuant to  
46 applicable law; provided, however, that for the purposes of article  
47 15-A of the New York state executive law only, the Commission  
48 shall be deemed a state agency as that term is used in such article

1 and its contracts and agreements and other documents and  
2 instruments which the commission is otherwise authorized to make,  
3 enter into, execute, and deliver for the Gateway Program shall be  
4 deemed state contracts within the meaning set forth in such article;  
5 provided, however, that the facilitation of the project within the  
6 state of New Jersey shall be subject to chapter 15 of Title 34 of the  
7 Revised Statutes and that each worker employed to perform  
8 construction work in the state of New Jersey pursuant to the  
9 Gateway Program shall be paid not less than the prevailing wage  
10 rate for the worker's craft or trade, as determined by the  
11 Commissioner of Labor and Workforce Development pursuant to  
12 P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005, c.379  
13 (C.34:11-56.58 et seq.); provided, however, that construction  
14 contracts entered into by the Commission where work pursuant to  
15 the contract is conducted in the state of New Jersey shall be subject  
16 to the requirements of section 24 of P.L.1984, c.73 (C.27:1B-24);  
17 and provided, however, the Commission shall not have the authority  
18 to operate or directly engage in transportation services such that the  
19 Commission would be subject to the jurisdiction of the federal  
20 surface transportation board;

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

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

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

42 e. Make, procure, enter into, execute, and deliver contracts and  
43 agreements and other documents and instruments as may be  
44 necessary or appropriate to carry out any power or duty of the  
45 Commission under P.L. , c. (C. ) (pending before the  
46 Legislature as this bill) and to otherwise accomplish any lawful  
47 purpose which the commissioners determine will Facilitate the  
48 Gateway Program, including, without limitation, with the federal

1 government, the State of New Jersey, any local government thereof,  
2 the State of New York, any local government thereof, any agency,  
3 instrumentality, department, commission, or authority of any one or  
4 more of the foregoing, any bi-state agency, Amtrak, any individual  
5 or private firm, entity, or corporation, or with any one or more of  
6 them;

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

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

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

30 i. Coordinate with entities from each state or both states to  
31 issue or guarantee bonds, notes, or other evidence of indebtedness,  
32 enter into loan agreements and otherwise borrow funds, or incur  
33 indebtedness or other future payment obligations for any corporate  
34 purpose, including to effectuate Full Funding, and to assign, pledge,  
35 mortgage, secure, encumber, and use its funds, assets, property, and  
36 revenues for repayment thereof, to be payable out of the funds,  
37 assets, properties, and revenues of the Commission without recourse  
38 to taxation, provided that the borrowing activity has previously  
39 been included as part of the report required pursuant to subsection f.  
40 of section 7 of P.L. , c. (C. ) (pending before the  
41 Legislature as this bill) and was not disapproved by either or both  
42 legislatures or otherwise precluded by conditions placed upon funds  
43 provided by another agency or entity, and further provided that the  
44 Commission shall have no power to pledge the full faith and credit  
45 of the federal government, the State of New Jersey, any local  
46 government thereof, the State of New York, any local government  
47 thereof, or of Amtrak or the Port Authority of New York and New  
48 Jersey in connection with the Gateway Program, or to impose any



1 obligation for payment of the bonds upon the federal government,  
2 the State of New Jersey, any local government thereof, the State of  
3 New York, any local government thereof, or of Amtrak or the Port  
4 Authority of New York and New Jersey, in each case except as set  
5 forth in a binding agreement, or to otherwise commit any party to  
6 incur any liability in excess of its contractual obligations in  
7 connection with the Gateway Program, and provided further that  
8 neither the commissioners nor any person executing any bonds  
9 issued or guaranteed by the Commission shall be liable personally  
10 on such bonds or be subject to any personal liability or  
11 accountability by reason of the issuance thereof;

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

14 k. Appoint such officers and employees as the Commission  
15 may require for the performance of its duties and fix and determine  
16 their qualifications, duties, and compensation, subject to the  
17 provisions of the civil service law, the rules of the civil service  
18 commission of the city, the New York state collective bargaining  
19 law and applicable collective bargaining agreements with regard to  
20 those officers, and employees who are residents of and work in New  
21 York state including engineers, attorneys, consultants, financial  
22 advisors and such other persons or entities as the business of the  
23 Commission may require and subject to the civil service law and  
24 New Jersey collective bargaining law and applicable collective  
25 bargaining agreements with regard to those officers and employees  
26 who are residents of and work in the state of New Jersey including  
27 engineers, attorneys, consultants, financial advisors and such other  
28 persons or entities as the business of the Commission may require.  
29 The Commission shall participate in the New York city employees'  
30 retirement system;

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

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

- 1 n. Indemnify individuals and entities to the extent required to  
2 Facilitate the Gateway Program;
- 3 o. Establish or acquire subsidiaries as required to Facilitate the  
4 Gateway Program;
- 5 p. 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 Gateway Program;
- 8 q. Exercise all other powers as may be necessary or appropriate  
9 in furtherance of, and consistent with, the purposes of P.L. ,  
10 c. (C. ) (pending before the Legislature as this bill), provided  
11 that this subsection shall not be construed to delegate any sovereign  
12 power of either state unless that power has been expressly delegated  
13 to the Commission pursuant to the provisions of P.L. ,  
14 c. (C. ) (pending before the Legislature as this bill).

15

16 9. (New section) Commission annual financial reporting.

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

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

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

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

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

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

36

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

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

42 b. The audit committee of the board of commissioners of the  
43 Commission shall arrange for an independent firm of certified  
44 public accountants to perform an audit of the financial statements of  
45 the Commission each year, in accordance with generally accepted  
46 accounting principles and standards referenced in subsection a. of  
47 this section. Each independent firm of certified public accountants

1 that performs any audit required by this section shall timely report  
2 to the board of the Commission:

- 3 (1) all critical accounting policies and practices to be used; and
- 4 (2) other material written communications, that is not privileged  
5 or confidential, between the independent firm of certified public  
6 accountants and the management of the Commission, including the  
7 management letter along with management's response or plan of  
8 corrective action, material corrections identified, or schedule of  
9 unadjusted differences.

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

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

36 e. The Commission shall not contract with the independent  
37 firm of certified public accountants performing the Commission's  
38 audit for any non-audit services to such Commission  
39 contemporaneously with the audit, unless receiving previous written  
40 approval by the audit committee including:

- 41 (1) bookkeeping or other services related to the accounting  
42 records or financial statements of such Commission;
- 43 (2) financial information systems design and implementation;
- 44 (3) appraisal or valuation services, fairness opinions, or  
45 contribution-in-kind reports;
- 46 (4) actuarial services;
- 47 (5) internal audit outsourcing services;
- 48 (6) management functions or human services;

1 (7) broker or dealer, investment advisor, or investment banking  
2 services; and

3 (8) legal services and expert services unrelated to the audit.

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

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

16

17 11. (New section) Contracts of the Commission.

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

20 "Construction item" means any such item or material used in  
21 construction and which is procured directly by the Commission or  
22 office or any such item or material commonly used in construction  
23 which is procured by a person, other than a municipality, under  
24 contract with the Commission or office.

25 "Office" means the New York office of general services.

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

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

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

41 "Specification" means any description of the physical or  
42 functional characteristics, or of the nature of a material, supply,  
43 equipment, or construction item. It may include a description of any  
44 requirement for inspecting, testing, or preparing a material, supply,  
45 equipment, or construction item for delivery.

46 b. Specifications. The Commission shall create and update  
47 product specifications to ensure that:

1 (1) Specifications do not exclude the use of products  
2 manufactured from secondary materials or require that products be  
3 manufactured from virgin materials only, provided however, the  
4 specifications may include such an exclusion if the Commission  
5 demonstrates that for a particular end use a product containing  
6 secondary materials would not meet necessary performance  
7 standards.

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

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

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

19 c. Ground for cancellation of contract by the Commission.

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

42 d. Disqualification to contract with public authority.

43 Any person who, when called before a grand jury, head of a state  
44 department, temporary state commission or other state agency of the  
45 state of New York or the state of New Jersey, the organized crime  
46 task force in the department of law of the state of New York, head  
47 of a city department, or other city agency, which is empowered to  
48 compel the attendance of witnesses and examine them under oath,

1 to testify in an investigation concerning any transaction or contract  
2 had with the applicable state, any political subdivision thereof, a  
3 public authority or with a public department, agency, or official of  
4 the state or of any political subdivision thereof or of a public  
5 authority, refuses to sign a waiver of immunity against subsequent  
6 criminal prosecution or to answer any relevant questions concerning  
7 such transaction or contract, and any firm, partnership, or  
8 corporation, of which he is a member, partner, director, or officer  
9 shall be disqualified from thereafter selling to or submitting bids to  
10 or receiving awards from or entering into any contracts with the  
11 Commission or any official of the Commission, for goods, work, or  
12 services, for a period of five years after such refusal or until a  
13 disqualification shall be removed pursuant to the provisions of  
14 subsection e. of this section.

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

47 e. Removal of disqualification of public contractors by  
48 petition.

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

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

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

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

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

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

45 Every bid or proposal hereafter made to the Commission or to  
46 any official of the Commission, where competitive bidding is  
47 required by statute, rule, regulation, or local law, for work or  
48 services performed or to be performed or goods sold or to be sold,



1 shall contain the following statement subscribed by the bidder and  
2 affirmed by such bidder as true under the penalties of perjury:

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

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

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

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

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

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

44 g. Procurement contracts.

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

46 "Allowable indirect costs" means those costs incurred by a  
47 professional firm that are generally associated with overhead which  
48 cannot be specifically identified with a single project or contract

1 and are considered reasonable and allowable under specific state  
2 contract or allowability limits.

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

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

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

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

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

47 (3) For purposes of this subsection, procurement contracts shall  
48 mean any written agreement for the acquisition of goods or services

1 of any kind, in the actual or estimated amount of five thousand  
2 dollars or more.

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

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

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

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

41 (d) Requirements for the designation of one or more senior staff  
42 of the Commission to oversee the Commission's programs  
43 established to promote and assist: participation by certified minority  
44 or women-owned business enterprises in the Commission's  
45 procurement opportunities and facilitation of the award of  
46 procurement contracts to such enterprises; the utilization of  
47 certified minority and women-owned business enterprises as  
48 subcontractors and suppliers by entities having procurement

1 contracts with the Commission; and the utilization of partnerships,  
2 joint ventures, or other similar arrangements between certified  
3 minority and women-owned business enterprises and other entities  
4 having procurement contracts with the Commission. Such staff  
5 shall be familiar with the procurement of the types of construction,  
6 financial, legal, or professional services utilized by the  
7 Commission, report directly to the Commission's executive  
8 director, and either directly or through their designees participate in  
9 the procurement process.

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

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

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

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

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

44 Provisions designating the New York division of minority and  
45 women's business development to certify and decertify minority  
46 and women-owned business enterprises through a single process  
47 that meets applicable state and federal requirements;

1 A requirement that each contract solicitation document  
2 accompanying each solicitation set forth the expected degree of  
3 minority and women-owned business enterprise participation based,  
4 in part, on: the potential subcontract opportunities available in the  
5 prime procurement contract; and the availability of certified  
6 minority and women-owned business enterprises to respond  
7 competitively to the potential subcontract opportunities;

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

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

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

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

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

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

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

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

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

46 providing for the Commission to collect and to consult the  
47 specifications of New York state and New Jersey business  
48 enterprises in developing specifications for any procurement

1 contract for the purchase of good where possible, practicable,  
2 feasible and consistent with open bidding, except for procurement  
3 contracts for which the Commission would be expending funds  
4 received from states other than New York or New Jersey. The  
5 Commission shall, where feasible, make use of the stock item  
6 specification forms prepared by the New York commissioner of  
7 general services, and where necessary, consult with the New York  
8 commissioner of the office of general services, in developing such  
9 specifications and make such determinations;

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

37 except for procurement contracts for which the Commission  
38 would be expending funds received from another state, the  
39 Commission shall include in all bid documents provided to potential  
40 bidders a statement that information concerning the availability of  
41 New York state subcontractors and suppliers is available from the  
42 New York state department of economic development, which shall  
43 include the directory of certified minority and women-owned  
44 businesses, and it is the policy of New York state to encourage the  
45 use of New York state subcontractors and suppliers, and to promote  
46 the participation of minority and women-owned businesses where  
47 possible, in the procurement of goods and services;

1 with the cooperation of the community services division of the  
2 New York department of labor and through cooperative efforts with  
3 contractors, providing for the notification of New York state  
4 residents of employment opportunities arising in New York state  
5 out of procurement contracts let by the Commission in an amount  
6 estimated to be equal to or greater than one million dollars; and  
7 promulgating procedures which will assure compliance by  
8 contractors with such notification by requiring contractors to submit  
9 post-award compliance reports documenting their efforts to provide  
10 such notification through listing any such positions with the  
11 community services division, or providing for such notification in  
12 such manner as is consistent with existing collective bargaining  
13 contracts or agreements;

14 including in each set of documents soliciting bids on  
15 procurement contracts to let by the Commission a statement  
16 notifying potential bidders located in foreign countries that the  
17 Commission may assign or otherwise transfer offset credits created  
18 by such procurement contract to third parties located in New York  
19 state; providing for the assignment or other form of transfer of  
20 offset credits created by such procurement contracts, directly or  
21 indirectly, to third parties located in New York state, in accordance  
22 with the written directions of the New York commissioner of  
23 economic development; and providing for the corporation to  
24 otherwise cooperate with the department of economic development  
25 in efforts to get foreign countries to recognize offset credits  
26 assigned or transferred to third parties located in New York state  
27 created by such procurement contracts; and

28 promulgating procedures which will assure compliance with the  
29 federal "Equal Employment Opportunity Act of 1972" (Pub. L. 92-  
30 261), as amended, by contractors of the corporation.

31 (m) For the purposes of this section:

32 "New Jersey business enterprise" means a business enterprise,  
33 including a sole proprietorship, partnership, or corporation, which  
34 offers for sale or lease or other form of exchange, goods which are  
35 sought by the Commission and which are substantially  
36 manufactured, produced, or assembled in New Jersey, or services  
37 which are sought by the Commission and which are substantially  
38 performed within New Jersey.

39 "New Jersey resident" means a natural person who maintains a  
40 fixed, permanent, and principal home located within New Jersey  
41 and to which such person, whenever temporarily located, always  
42 intends to return.

43 "New York resident" means a natural person who maintains a  
44 fixed, permanent and principal home located within New York state  
45 and to which such person, whenever temporarily located, always  
46 intends to return.

47 "New York state business enterprise" means a business  
48 enterprise, including a sole proprietorship, partnership, or

1 corporation, which offers for sale or lease or other form of  
2 exchange, goods which are sought by the Commission and which  
3 are substantially manufactured, produced, or assembled in New  
4 York state, or services which are sought by the Commission and  
5 which are substantially performed within New York state.

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

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

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

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

41 (9) Nothing contained in this section shall be deemed to alter,  
42 affect the validity of, modify the terms of, or impair any contract or  
43 agreement made or entered into in violation of, or without  
44 compliance with, the provisions of this section.

45 h. Comptroller approval of contracts.

46 (1) Except as set forth in paragraph (3) of this subsection, where  
47 the comptroller of the state of New York or the comptroller of the  
48 state of New Jersey determines pursuant to his or her authority to



1 supervise the accounts of the Commission, that contracts or  
2 categories of contracts in excess of one million dollars: to be  
3 awarded by the Commission to a single source, a sole source or  
4 pursuant to any other method of procurement that is not  
5 competitive; or which are to be paid in whole or in part from  
6 monies appropriated by each respective state to the Commission for  
7 such contractual expenditure, require supervision in the form of  
8 prior review and approval of such contracts, and the comptroller of  
9 the state of New York or the comptroller of the state of New Jersey  
10 so notifies the Commission of such determination, then any such  
11 contract entered into subsequent to such notification shall be  
12 submitted to the respective comptroller of the state of New York or  
13 the comptroller of the state of New Jersey for his or her approval  
14 and shall not be a valid enforceable contract unless it shall first  
15 have been approved by the respective comptroller of the state of  
16 New York or the comptroller of the state of New Jersey. Such  
17 notification shall identify the process for submission, the categories  
18 of contracts at issue and the time period for which such submission  
19 is to take place. The comptroller of the state of New York and the  
20 comptroller of the state of New Jersey shall promulgate such rules  
21 and regulations as may be necessary to carry out his or her  
22 responsibilities under this section, including but not limited to the  
23 standards for determining which contracts will be subject to his or  
24 her review and for approving such contracts

25 (2) Where the comptroller of the state of New York or the  
26 comptroller of the state of New Jersey, pursuant to paragraph (1),  
27 has notified the Commission that any contract or category of  
28 contracts shall be subject to his or her approval, the Commission  
29 shall include or cause to be included in each such contract a  
30 provision informing the other party that such contract is subject to  
31 the comptroller of the state of New York or the comptroller of the  
32 state of New Jersey's approval pursuant to the respective  
33 comptroller's authority to supervise the accounts of the  
34 Commission. If the comptroller of the state of New York or the  
35 comptroller of the state of New Jersey has not approved or  
36 disapproved any contract subject to his or her approval within 90  
37 days of submission to his or her office, such contract shall become  
38 valid and enforceable without such approval.

39 (3) This subsection shall not apply to: contracts entered into for  
40 the issuance of commercial paper or bonded indebtedness, other  
41 than contracts with the state of New York or the state of New Jersey  
42 providing for the payment of debt service subject to an  
43 appropriation; contracts of purchase or sale of energy, electricity or  
44 ancillary services made by the Commission on a recognized market  
45 for goods, services, or commodities in question in accordance with  
46 standard terms and conditions of purchase or sale at a market price;  
47 contracts for the purchase, sale, or delivery of power or energy,  
48 fuel, costs, and services ancillary thereto, or financial products

1 related thereto, with a term of less than five years; and contracts  
2 entered into for the procurement of goods, services or both goods  
3 and services made to meet emergencies arising from unforeseen  
4 causes or to effect repairs to critical infrastructure that are necessary  
5 to avoid a delay in the delivery of critical services that could  
6 compromise the public welfare.

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

14  
15 12. (New section) Subsidiaries of the Commission.

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

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

27 c. Within 60 days of the effective date of P.L. , c. (C. )  
28 (pending before the Legislature as this bill), and on or before the  
29 first day of January of each year annually thereafter, any subsidiary  
30 corporation, in cooperation with the Commission, shall provide to  
31 the governor and legislature of each state a report on the subsidiary  
32 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, the majority leader of

1 each house of the legislature of each state, the Chair of the Senate  
2 Finance Committee of New York, the Chair of the Senate Budget  
3 and Appropriations Committee of New Jersey, the Chair of the  
4 Assembly Ways and Means Committee of New York, and the Chair  
5 of the Assembly Budget Committee of New Jersey. For purposes of  
6 this section, as applicable to New York state “majority leader” shall  
7 mean the Speaker of the Assembly of the New York State  
8 Legislature or Temporary President of the Senate of the New York  
9 State Legislature. For purposes of this section, as applicable to the  
10 State of New Jersey “majority leader” shall mean the President of  
11 the Senate or the Speaker of the General Assembly of the State of  
12 New Jersey.

13

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

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

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

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

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

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

43 (4) The board of commissioners shall adopt, within six months of  
44 the effective date of P.L. , c. (C. ) (pending before the  
45 Legislature as this bill), appropriate rules and regulations  
46 concerning disposition, acquisition, and transfer of real property or  
47 any interest in real property by the Commission which shall, at a  
48 minimum, include a requirement that the following information be

1 made available to the board of commissioners at the meeting where  
2 approval of such a disposition, acquisition or transfer is scheduled:

3 a full description of the property;

4 a description of the purpose of the disposition, acquisition, or  
5 transfer;

6 a statement of the value to be received from such a disposition,  
7 acquisition, or transfer;

8 the names of any private parties participating in the disposition,  
9 acquisition, or transfer; and

10 in the case of a property disposition for less than fair market  
11 value, an explanation and a written determination by the board of  
12 commissioners that there is no reasonable alternative to the  
13 proposed below-market value that would achieve the same purpose  
14 of such disposition.

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

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

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

39 b. Capital plan.

40 (1) The Commission shall adopt a 10-year capital plan that is  
41 developed using a comprehensive planning process and risk-based  
42 prioritization that considers asset condition, operational and revenue  
43 impact, threat assessment, customer service, regional benefit, and  
44 regulatory or statutory requirements. The capital plan shall be  
45 dependent upon the availability of sufficient funding and other  
46 resources to pursue the capital projects proposed for the 10-year  
47 period. Performance progress and revisions to reflect changes in  
48 programs, policies, and projects and the environment in which the

1 Commission operates shall be reviewed regularly by a committee  
2 designated by the board of commissioners, and the capital plan shall  
3 be revised periodically as necessary and appropriate, and shall be  
4 reviewed with the board of commissioners annually. The  
5 Commission shall publish an annual report on the status of the  
6 capital program and such report shall be made publicly available on  
7 the Commission's website. Prior to adoption of a capital plan, the  
8 Commission shall make the proposed plan available for public  
9 review and comments on its public website for at least four weeks  
10 prior to approval, and all comments received by the Commission  
11 are to be distributed to the board of commissioners for review prior  
12 to consideration of the capital plan.

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

26 (3) No less than 60 days prior to any board adoption of a capital  
27 plan, as described in paragraph (1) of this subsection, or any major  
28 revision of the last adopted capital plan, the Commission shall:  
29 notify the Assembly and Senate of the New York state legislature  
30 and the General Assembly and Senate of the New Jersey state  
31 legislature of its intention to adopt a capital plan, or any major  
32 revision of the last adopted capital plan; submit to the Assembly  
33 and Senate of the New York state legislature and the General  
34 Assembly and Senate of the New Jersey state legislature the  
35 proposed capital plan, or any proposal constituting a major revision  
36 of the last adopted capital plan, for review by each state legislature;  
37 and make the proposed capital plan, including any proposal  
38 constituting a major revision of the last adopted capital plan,  
39 publicly available on the Commission's website. In either case, the  
40 notice shall recite the major elements of the capital plan to be  
41 adopted.

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

46 (5) The Commission shall conduct a status update public hearing  
47 in New York state and in the State of New Jersey at least once  
48 every three years after the adoption of the capital plan by the

1 Commission. Such public hearing shall be known as “capital status  
2 update hearing” and at such hearing the Commission shall provide  
3 in detail a written description of the status of all capital plan  
4 projects and the costs and the expected costs of those projects. At  
5 such public hearing, the Commission shall provide a financing plan  
6 that identifies the source of funding for each project. The  
7 Commission shall provide an analysis that compares actual and  
8 target performance measures, and a detailed written explanation of  
9 any discrepancy thereof at the public hearing.

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

17

18 14. (New section) Exemption from taxes, local taxes.

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

34 b. The Commission shall, as a matter of policy, conform to the  
35 enactments, ordinances, resolutions, and regulations of the  
36 respective states and local governments where the Gateway  
37 Program is located in regard to the construction and maintenance of  
38 the Gateway Program and in regard to health and fire protection  
39 which would be applicable if the Commission were a private  
40 corporation, to the extent that the Commission finds it practicable to  
41 do so, without interfering with, impairing, or affecting the  
42 efficiency of its purposes under P.L. , c. (C. ) (pending  
43 before the Legislature as this bill), or its ability to effectuate the  
44 Gateway Program upon a self-supporting basis, or its obligations,  
45 duties, and responsibilities to the two states, its bondholders (if any)  
46 and the general public, but the decision of the Commission as to  
47 whether it is practicable so to do shall be controlling. To that end,  
48 the Commission shall submit copies of plans and specifications for

1 buildings and structures to the appropriate state and local  
2 government officials and shall consult with them with respect  
3 thereto, and shall receive their comments and suggestions thereon,  
4 but the Commission shall make the final determination as to which  
5 comments and suggestions to accept in effectuating the Gateway  
6 Program.

7

8 15. (New section) Cooperation with governmental entities.

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

17

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

19 Upon the concurrence of the State of New York, the State of  
20 New Jersey and the State of New York consent to suits, actions, or  
21 proceedings of any form or nature at law, in equity, or otherwise  
22 (including proceedings to enforce arbitration agreements) against  
23 the Commission, and to appeals therefrom and reviews thereof,  
24 except as hereinafter provided. The foregoing consent does not  
25 extend to: (1) suits, actions, or proceedings upon any causes of  
26 action whatsoever accruing before the effective date of P.L. ,  
27 c. (C. ) (pending before the Legislature as this bill); (2) suits,  
28 actions, or proceedings upon any causes of action whatsoever, upon,  
29 in connection with, or arising out of any contract, express or  
30 implied, entered into or assumed by or assigned to the Commission  
31 before the effective date of P.L. , c. (C. ) (pending before  
32 the Legislature as this bill) (including any supplement to, or  
33 amendment, extension, or renewal of any such contract, even if  
34 such supplement, amendment, extension, or renewal is made on or  
35 after the effective date of P.L. , c. (C. ) (pending before the  
36 Legislature as this bill)), regardless of whether such cause of action  
37 accrued before or after that date; (3) civil suits, actions, or  
38 proceedings for the recovery of statutory penalties; and (4) suits,  
39 actions, or proceedings for judgments, orders, or decrees  
40 restraining, enjoining, or preventing the Commission from  
41 committing or continuing to commit any act or acts, other than  
42 suits, actions, or proceedings by the Attorney General of New  
43 Jersey or by the Attorney General of New York, each of whom is  
44 hereby authorized to bring such suits, actions, or proceedings in the  
45 attorney general's discretion on behalf of any person or persons  
46 whatsoever who requests the attorney general so to do except in the  
47 cases otherwise excluded by P.L. , c. (C. ) (pending before  
48 the Legislature as this bill); provided, that in any such suit, action,

1 or proceeding, no judgment, order, or decree shall be entered except  
2 upon at least two days' prior written notice to the Commission of  
3 the proposed entry thereof.

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

9  
10 17. (New section) Dissolution.

11 a. The Commission shall dissolve on the first day of the 36th  
12 month following the completion of the Gateway Program, provided  
13 that plans have been adopted for the transfer of the component  
14 projects of the Gateway Program to appropriate agencies,  
15 instrumentalities, or entities, which shall include repayment of or an  
16 arrangement for the full repayment of any bonds or other securities  
17 issued and any other debt incurred for Gateway Program purposes  
18 without impairment of the creditworthiness of either state and that  
19 any receiving agency, instrumentality, or entity enters into an  
20 agreement concerning responsibility for maintenance and upkeep of  
21 the relevant component project, and further provided that Amtrak is  
22 not unduly prejudiced by such dissolution.

23 b. The Governor of New Jersey and the Governor of New York  
24 may jointly determine that dissolution of the Commission on the  
25 first day of the 36th month is impractical and may jointly agree to  
26 delay the dissolution until the first day of the 48th month following  
27 completion of the Gateway Program to resolve any issues  
28 concerning transfer or any component projects or resolution of any  
29 outstanding debt or to remedy any undue prejudice to Amtrak  
30 resulting from dissolution at an earlier date.

31 c. The Commission shall not remain in existence beyond the  
32 first day of the 48th month following completion of the Gateway  
33 Program.

34  
35 18. (New section) Amendment to agreement.

36 The provisions of this agreement may be amended, altered,  
37 supplemented, or repealed from time to time by the action of the  
38 legislature of either state concurred in by the legislature of the  
39 other.

40 For the purposes of this section, "this agreement" means sections  
41 1 through 19 of P.L. , c. (C. ) (pending before the  
42 Legislature as this bill).

43  
44 19. (New section) Severability.

45 If any provision of P.L. , c. (C. ) (pending before the  
46 Legislature as this bill), or the application thereof to any person or  
47 circumstance is held invalid, including as not in accordance with  
48 federal law or federal constitutional requirements, such invalidity



1 shall not affect other provisions or applications of P.L. ,  
2 c. (C. ) (pending before the Legislature as this bill) which can  
3 be given effect without the invalid provision or application and to  
4 this end the provisions of P.L. , c. (C. ) (pending before the  
5 Legislature as this bill) are declared to be severable.

6  
7 20. (New section) a. There shall be three commissioners of the  
8 Gateway Development Commission appointed from this State, in  
9 accordance with section 5 of P.L. , c. (C. ) (pending before  
10 the Legislature as this bill), who shall each serve at the pleasure of  
11 the Governor.

12 b. One commissioner shall be appointed by the Governor with  
13 the advice and consent of the Senate. One commissioner shall be  
14 appointed by the Governor upon the recommendation of the  
15 Speaker of the General Assembly. One commissioner shall be  
16 appointed by the Governor upon the recommendation of the  
17 President of the Senate.

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

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

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

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

41 g. Pursuant to subsection c. of section 6 of P.L. , c. (C. )  
42 (pending before the Legislature as this bill), the Legislature hereby  
43 determines that the collective vote of the New Jersey members of  
44 the Gateway Development Commission shall be determined by the  
45 affirmative vote of at least two of the New Jersey commissioners.

46  
47 21. (New section) a. The minutes of every meeting of the  
48 Gateway Development Commission held under or within the

1 purview of P.L. , c. (C. ) (pending before the Legislature as  
2 this bill) shall be forthwith transmitted, by and under the  
3 certification of the secretary thereof, to the Governor of this State.  
4 No action taken at such meeting by any commissioner appointed  
5 from this State shall have force or effect for a period of 10 days,  
6 Saturdays, Sundays, and public holidays excepted, after the minutes  
7 shall have been so transmitted and delivered unless the Governor  
8 shall finally approve the minutes or any part thereof, reciting any  
9 such action, within said 10-day period.

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

18

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

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

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

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

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

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

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

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

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

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

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

7 (2) Aeronautics permits;

8 (3) Right-of-way permits;

9 (4) Traffic signal control systems;

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

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

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

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

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

31 (n) Acquire by eminent domain, pursuant to the eminent domain  
32 law and R.S.27:7-22, any property, property rights, or property  
33 interests, including easements, air rights, below-grade and  
34 subsurface rights, hereinafter referred to as "Property Interests,"  
35 including rights on property now or previously designated as  
36 parkland or dedicated to a public use, provided that such Property  
37 Interests are located in the State and, in the judgment of the  
38 commissioner, are necessary or appropriate for the construction,  
39 reconstruction, development, redevelopment, use, occupancy,  
40 operation, and maintenance of passenger rail transportation  
41 facilities and ancillary facilities between New Jersey and New York  
42 Penn Station, in a corridor beginning at or near Newark Penn  
43 Station and ending at the boundary of the State of New Jersey in the  
44 Hudson River. Property Interests may be acquired pursuant to this  
45 subsection notwithstanding any requirement in R.S.27:7-36 or any  
46 other provision of law, general, special, charter, or local, and  
47 regardless of whether the Property Interests are or were dedicated to  
48 public use. All of such Property Interests may be acquired by the

1 commissioner pursuant to applicable provisions of the eminent  
2 domain law and R.S.27:7-22, provided that any acquisition of  
3 Property Interests pursuant to this subsection shall be contingent on  
4 the commissioner entering into an agreement addressing such  
5 acquisition with the Gateway Development Commission, approved  
6 in accordance with that entity's authorizing statute, and the  
7 Gateway Development Commission shall agree to pay the costs  
8 incurred by the commissioner in acquiring such Property Interests  
9 pursuant to the eminent domain law. Notwithstanding any other  
10 provision of law, general, special, charter, or local, following  
11 acquisition, the commissioner may use such property together with  
12 property already owned or held, to: enter into contracts to sell,  
13 transfer, lease, or exchange with, or grant easements, licenses,  
14 permits, concessions, or other authorizations to, the Gateway  
15 Development Commission sufficient to permit the construction,  
16 reconstruction, development, redevelopment, use, occupancy,  
17 operation, and maintenance by the Gateway Development  
18 Commission or its permittees and successors, of the aforementioned  
19 passenger rail facilities and ancillary facilities. Authorization is  
20 hereby given to the commissioner to do all things necessary or  
21 appropriate to carry out the purposes of this subsection.

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

23

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

32

33

34

#### STATEMENT

35

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

1 *Purposes*

2

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

12

13 *Commission membership*

14

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

25

26 *Organization of the commission*

27

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

34 The powers of the GDC may be exercised by the commissioners  
35 at a meeting duly noticed and held where a majority of  
36 commissioners are present. New Jersey, New York, and Amtrak  
37 each possess one collective vote, which is to be cast in accordance  
38 with the laws of New Jersey, the laws of New York, and as  
39 determined by Amtrak, respectively. Under the bill, the New Jersey  
40 vote may be cast only upon the affirmative vote of two New Jersey  
41 commissioners. Action may be taken and motions and resolutions  
42 adopted by the GDC only through the unanimous affirmative vote  
43 of each party to the GDC. The bill provides that each state may  
44 provide for a gubernatorial veto over any action of any  
45 commissioner appointed therefrom. The bill provides that the  
46 Governor of New Jersey has 10 business days after the meeting  
47 minutes are provided to the Governor to review actions taken at a  
48 GDC meeting. During that 10-day period, the Governor may

1 approve the meeting minutes or may veto any action therein recited  
2 as having been taken by any New Jersey commissioner. If the  
3 Governor does not return the meeting minutes within 10 days, the  
4 minutes are deemed approved.

5

6 *Transparency and accountability measures*

7

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

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

32 All meetings of the GDC are required to be open to the public  
33 and members of the news media, except for when the GDC meets in  
34 executive session. The bill provides for specific exceptions to the  
35 requirement that the meeting be open to the public. Meeting  
36 agendas are required to be made available to the public at least 72  
37 hours before a meeting and public notice of the time and place of  
38 the meeting is required to be provided to media outlets and  
39 conspicuously posted in designated areas and on the GDC's website  
40 at least five days before the meeting. The public is reserved at least  
41 30 minutes at each board meeting to speak on any topic on an  
42 agenda. The GDC is required to keep reasonably comprehensible  
43 minutes of all meetings and to make those minutes available on its  
44 website within two weeks from the date of the meeting. The GDC  
45 is required to make all reasonable efforts to ensure that meetings are  
46 held in facilities that permit barrier-free physical access to people  
47 with disabilities. The bill subjects the GDC to the New York  
48 freedom of information law for requests filed in New York and to

1 the New Jersey open public records law for requests filed in New  
2 Jersey. The GDC is required to appear before a committee of the  
3 legislative houses of each state upon request from that house's  
4 presiding officer. Each legislative house is entitled to require two  
5 such appearances in each calendar year. The bill specifies which  
6 officers are required to appear, unless otherwise agreed to by the  
7 presiding officer of the legislative house making the request.

8

9 *Duties of the GDC*

10

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

26

27 *Powers of the GDC*

28

29 The powers of the GDC are to: (1) facilitate the Gateway  
30 Program through contracts and agreements and other documents  
31 and instruments, provided that the GDC complies with workers  
32 compensation, prevailing wage, and other labor laws in each  
33 respective state; (2) sue and be sued; (3) accept and expend funds;  
34 (4) acquire property, including by condemnation, and, solely in  
35 furtherance of the purposes of the GDC, manage that property and  
36 develop undeveloped property necessary or appropriate to facilitate  
37 the Gateway Program; (5) make, procure, enter into, execute, and  
38 deliver contracts; (6) make applications for and accept funding,  
39 permits, authorizations, and approvals as may be necessary to  
40 facilitate the Gateway Program; (7) enter into agreements with a  
41 private entity or entities to facilitate the Gateway Program;  
42 (8) adopt its own public procurement rules and guidelines;  
43 (9) coordinate with entities from each or both states to issue or  
44 guarantee bonds, notes, or other evidence of indebtedness, enter  
45 into loan agreements and otherwise borrow funds, or incur  
46 indebtedness; (10) acquire and hold securities for investment  
47 purposes; (11) appoint officers and employees; (12) obtain  
48 insurance; (13) cooperate with governmental entities or private

1 entities; (14) indemnify individuals and entities to the extent  
2 required to facilitate the Gateway Program; (15) establish or acquire  
3 subsidiaries as required to facilitate the Gateway Program; (16)  
4 utilize the existing labor force in the states and foster labor harmony  
5 in allowing for adoption of efficient labor work rules and practices  
6 during construction of the Gateway Program; and (17) exercise all  
7 other powers as may be necessary or appropriate.

8

9 *Financial reporting and audit and financial statements*

10

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

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

24

25 *Contracting*

26

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

37

38 *Subsidiaries*

39

40 No less than 60 days prior to the formation of a subsidiary, the  
41 GDC is required to provide notice to the governor of each state and  
42 certain members of each state's legislatures. The creation of a  
43 subsidiary corporation is subject to approval by the board.

44 Within 60 days of the effective date of the bill, and on or before  
45 the first day of January of each year annually thereafter, any  
46 subsidiary corporation, in cooperation with the GDC, is required to  
47 provide to the governor and legislature of each state a report on the



1 subsidiary corporation containing information required under the  
2 bill.

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

7

8 *Property disposition*

9

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

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

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

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

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

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

1 value of the personal property is in excess of \$1,000,000, the sale of  
2 the property is dependent on authorization by the board.

3

4 *Exemption from taxes and other laws*

5

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

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

15

16 *Consent to suit*

17

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

29 The GDC is declared immune from liability in the state of New  
30 Jersey in the same manner that the state itself is immune from  
31 liability under the "New Jersey Tort Claims Act" and "New Jersey  
32 Contractual Liability Act."

33

34 *Dissolution*

35

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

46 The bill authorizes the governors of both states to jointly  
47 determine that dissolution of the GDC on the required date is  
48 impractical and to extend the dissolution for one year to the first

1 day of the 48th month following completion of the Gateway  
2 Program in order to resolve any issues concerning transfer of  
3 component projects, resolution of outstanding debt, or to remedy  
4 any undue prejudice to Amtrak. The bill provides that the GDC is  
5 prohibited from remaining in existence beyond the first day of the  
6 48th month following completion of the Gateway Program.

7

8 *Amendment to the agreement*

9

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

13

14 *New Jersey commissioners*

15

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

28

29 *Condemnation power*

30

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

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 5570**

**STATE OF NEW JERSEY**

DATED: JUNE 18, 2019

The Assembly Appropriations Committees reports favorably an Assembly committee substitute for Assembly No. 5570.

This substitute bill establishes the Gateway Development Commission (“GDC”) for the primary purpose of constructing the transportation projects known as the Gateway Program. The Gateway Program is intended to maintain and increase passenger rail capacity, reliability, safety, and security between New Jersey and New York and consists of component projects within Phase One and Phase Two of the project. The bill specifically delineates Phase One to include: the Hudson Tunnel project; the Portal North Bridge project; and the Hudson Yards right-of-way preservation project. The bill leaves open the projects which are to be included in Phase Two, which is subject to a memorandum of understanding between the two states.

*Purposes*

The purposes of the GDC are to facilitate the Gateway Program, coordinate the activities of governmental entities involved in the Gateway Program, act as a coordinating agency to facilitate the Gateway Program, pursue efforts to assist federal and state agencies and other entities to further passenger rail transportation between the two states, to take any and all actions that may be necessary or appropriate to qualify for financial assistance, loans, grants, or other funding that may be available for the Gateway Program, and to facilitate the Gateway Program by accepting, collecting, and receiving funds pursuant to a memorandum of understanding entered into pursuant to the bill and by establishing, levying, and collecting tolls and fees payable by entities using the Project. The GDC’s power to establish tolls and fees is limited in such a manner that the GDC: is prohibited from establishing tolls or fees at a rate greater than is necessary to facilitate the Gateway Program; is required to adopt any tolls or fees by board action, provided that the board complies with public hearing requirements established in the bill; is prohibited from conflicting with federal law or the laws of the state of New York and the state of New Jersey; may only impose tolls or fees on the New Jersey Transit Corporation (NJ Transit) in a manner expressly and specifically authorized pursuant to a memorandum of understanding

executed pursuant to the bill. Any revenue from such a toll or fee is required to count toward the New Jersey share of funding pursuant to the memorandum of understanding.

#### *Commission membership*

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

#### *Organization of the commission*

The GDC board is to have two co-chairpersons, one from New York and one from New Jersey. Which commissioner serves as chairperson is to be determined by the laws of each respective state. If state law does not specify how to select the co-chairperson, the bill provides that the co-chairperson from a state is to be selected by that state's commissioners.

The powers of the GDC may be exercised by the commissioners at a meeting duly called and held where at least two commissioners from New York, two commissioners from New Jersey, and the Amtrak commissioner are present. Action may be taken and motions and resolutions adopted by the GDC through the affirmative vote of at least two New York commissioners, two New Jersey commissioners, and the Amtrak commissioner. The bill provides that each state's governor has a veto over any action of any commissioner appointed therefrom. Each governor has 10 business days after the meeting minutes are provided to the governor to review actions taken at a GDC meeting. During that 10-day period, each governor may approve the meeting minutes or may veto any action therein recited as having been taken by a commissioner of that governor's respective state. If the governor does not return the meeting minutes within 10 days, the minutes for actions taken by that state's commissioners are deemed approved.

#### *Transparency and accountability measures*

The GDC is required to adopt a mission statement, adopt a code of conduct, establish a whistleblower access and assistance program, and

establish policies regarding contact with lobbyists, and have an efficiency study of the GDC conducted by an independent entity at least every five years.

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

All meetings of the GDC are required to be open to the public and members of the news media, except for when the GDC meets in executive session. The bill provides for specific exceptions to the requirement that the meeting be open to the public. Meeting agendas are required to be made available to the public at least 72 hours before a meeting and public notice of the time and place of the meeting is required to be provided to media outlets and conspicuously posted in designated areas and on the GDC's website at least five days before the meeting. The public is reserved at least 30 minutes at each board meeting to speak on any topic on an agenda, or a reasonable amount of time in order to allow any persons in attendance an opportunity to comment on any topic on the agenda. The GDC is required to keep reasonably comprehensible minutes of all meetings and to make those minutes available on its website within two weeks from the date of the meeting. The bill subjects the GDC to the New York freedom of information law for requests filed in New York and to the New Jersey open public records law for requests filed in New Jersey. The GDC is authorized to appear before a committee of the legislative houses of each state upon request from that house's presiding officer. Each legislative house is entitled to request two such appearances in each calendar year. The bill authorizes each legislative house to request the attendance of any named officer of the GDC.

#### *Duties of the GDC*

The duties of the GDC are to: (1) make appropriate application for, and act as a coordinating, distributing, or recipient agency for funding and authorizations necessary or appropriate to facilitate the Gateway Program; (2) cooperate with various entities to facilitate the Gateway Program; (3) adopt bylaws and make appropriate orders to carry out and discharge its powers, duties, and functions; (4) expend funds and hold and prudently invest funds; (5) recommend appropriate federal, state, and local government legislation and agency administrative action pertaining to the Gateway Program; (6) prepare a report with

details on the progress on GDC activities; and (7) take any other action as may be necessary or appropriate to further the purposes of the GDC.

#### *Powers of the GDC*

The powers of the GDC are to: (1) facilitate the Gateway Program through contracts and agreements and other documents and instruments, provided that the GDC complies with workers compensation, prevailing wage, and other labor laws in each respective state; (2) sue and be sued; (3) accept and expend funds; (4) acquire property, including by condemnation, and manage that property and develop undeveloped property necessary or appropriate to facilitate the Gateway Program; (5) make, procure, enter into, execute, and deliver contracts; (6) make applications for and accept funding, permits, authorizations, and approvals as may be necessary to facilitate the Gateway Program; (7) enter into agreements with a public or private entity or entities to facilitate the Gateway Program and for use of the Project, provided that any tolls, fees, rates, charges, or rentals imposed do not conflict with federal law, the laws of the state of New Jersey and the state of New York, or the limitation on the GDC's tolling powers provided in section 4 of the bill; (8) adopt its own public procurement rules and guidelines, in accordance with provisions in the bill; (9) dispose of property in accordance with the provisions in the bill; (10) issue or guarantee bonds, notes, or other evidence of indebtedness, enter into loan agreements and otherwise borrow funds, or incur indebtedness; (11) acquire and hold securities for investment purposes; (12) appoint officers and employees; (13) obtain insurance; (14) cooperate with governmental entities or private entities; (15) indemnify individuals and entities to the extent required to facilitate the Gateway Program; (16) establish or acquire subsidiaries as required to facilitate the Gateway Program; (17) utilize the existing labor force in the states and foster labor harmony in allowing for adoption of efficient labor work rules and practices during construction of the Gateway Program; and (18) exercise all other powers as may be necessary or appropriate.

#### *Exemption from taxes, local laws*

The commission is not required to pay any taxes or assessments levied by either state or local government of either state on any property used for the facilitation of the project or any income or revenue from facilitation of the project. The commission is authorized to enter into a voluntary agreement with any local government to pay, in lieu of taxes, an annual sum for any real property acquired and owned by the commission and to provide a rental payment by any person occupying any portion of the real property. However, the voluntary agreement is not to provide for payment of an amount in

excess of the amount last paid as taxes upon the real property prior to the time the commission acquired the real property.

The commission is required to conform to the construction, maintenance, and health and fire protection requirements of the state or local government where the project is located in so far as the commission finds it practicable to do so. The commission is also required to submit copies of plans and specifications for buildings and structures to the appropriate state and local government officials and is to receive their comments and suggestions. However, the commission is to make the final determination as to which of those comments and suggestions to accept.

#### *Financial reporting and audit and financial statements*

The bill requires the GDC to publish a comprehensive annual financial report to be submitted annually to the governors and state legislatures within 120 days of the end of the GDC's fiscal year. The annual report is required to include an introductory section, a financial section, and a corporate information section.

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

#### *Debt issuance, capital plan, and operating budget*

The GDC is required to issue debt in accordance with the applicable laws governing the GDC and covenants with bondholders. At least 60 days prior to an intended issuance, the GDC is required to submit a statement of intent to the governor and legislature of each state.

The GDC is required to adopt a ten-year capital plan no later than January 30, 2020 and publish an annual report on the status of the capital program. The GDC is required to make the capital plan available to the public prior to its adoption. Major capital projects are required to be monitored by external engineering consultants.

The GDC is required to prepare a detailed annual operating budget beginning with the fiscal year commencing after enactment. A preliminary annual operating budget and the subsequent final annual operating budget are each required to be made publicly available each fiscal year.

#### *Contracting*

The bill establishes requirements for contracts for the GDC, which include requirements for specifications, grounds for cancellation of a



contract, disqualification to contract with the GDC, removal or disqualification of public contractors by petition, a statement of non-collusion to be included in bids and proposals, and requirements concerning minority-owned and women-owned businesses and New York and New Jersey business enterprises. The bill also authorizes each state's comptroller to examine the accounts and books of the GDC.

#### *Subsidiaries*

No less than 60 days prior to the formation of a subsidiary, the GDC is required to provide notice to the governor of each state and certain members of each state's legislatures. The creation of a subsidiary corporation is subject to approval by the board.

Within 60 days of the effective date of the bill, and on or before the first day of January of each year annually thereafter, any subsidiary corporation, in cooperation with the GDC, is required to provide to the governor and legislature of each state a report on the subsidiary corporation containing information required under the bill.

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

#### *Property disposition*

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

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

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

The bill requires the board to adopt rules and regulations concerning disposition, acquisition, and transfer of real property or any interest in real property which, at a minimum, includes a requirement

that certain information be made available to the board at the meeting where approval is scheduled.

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

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

#### *Consent to suit*

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

The GDC is declared immune from liability as if it were the state of New York, except to the extent such immunity is waived by the state of New York under the New York court of claims act. The bill further provides that the GDC is immune from liability in New Jersey as if it were the State of New Jersey for purposes of the "New Jersey Tort Claims Act" and "New Jersey Contractual Liability Act."

#### *State commitment*

The bill establishes an equal funding agreement between the State of New Jersey and the State of New York for Phase One of the Project. Both states and the Port Authority of New York and New Jersey are to enter into a memorandum of understanding detailing the timing and source of funding for their commitment to Phase One of the Project, and if agreed to in an amendment to the memorandum, for Phase Two of the Project or portions thereof.

For any toll or fee imposed on an instrumentality of either state, the revenue generated from that toll or fee is required to count toward that State's share for purposes of any memorandum of understanding entered into under the bill.

#### *State labor provisions*

The facilitation of any portion of the Project in each state is designated public work pursuant to each state's respective labor laws and is accordingly subject to the respective provisions of each state's laws applicable as such a designation.

#### *Dissolution*

The bill contemplates the dissolution of the GDC and requires the GDC's dissolution following a joint determination by the governor of each state that the Project has been completed and should be transferred to another agency, instrumentality, or entity. Any dissolution would require that bonds and other securities incurred for the Gateway Program have been repaid or arrangements have been made to ensure full repayment, without impairment of credit worthiness and also that Amtrak not be unduly prejudiced by the dissolution.

#### *Amendment to the agreement*

The bill provides that the states may amend, alter, supplement, or repeal the Gateway Commission Development Act through the enactment of law by one state concurred in through enactment of law in the other state.

#### *Severability and construction*

The bill provides that provisions in the bill that are held invalid are severable from the remainder of the bill and that the bill is to be liberally construed to give effect to the bill's purposes.

#### *New Jersey commissioners*

The bill provides that the three commissioners from New Jersey are to be appointed as follows: one directly by the Governor, one by the Governor upon recommendation of the Speaker of the General Assembly (Speaker), and one by the Governor upon the recommendation of the Senate President. The bill requires that the commissioners appointed upon recommendation of the Speaker and Senate President be appointed before the Governor's direct appointment. The bill requires that each commissioner be a resident voter of the State at the time of appointment and while serving as a commissioner. An individual is prohibited from being appointed if the

individual has not been a resident voter of the State for at least the two years immediately preceding appointment.

All vacancies in the office of commissioner are to be filled in the same manner as the original appointment. All commissioners are to hold office after the expiration of their term until their respective successors are appointed and qualified. Each New Jersey commissioner may be removed from office through the adoption of articles of impeachment by the General Assembly which are delivered to the Senate and following a trial and vote by the Senate on those articles of impeachment. The bill provides that the New Jersey co-chairperson is to be selected from the three New Jersey commissioners and determined by an affirmative vote of at least two New Jersey commissioners.

#### *Condemnation power*

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

#### *Sunset provision*

The bill provides that it is to expire and be deemed repealed 15 years from the effective date of the enactment if federal funding that is necessary for purposes of facilitating Phase One of the Project has not been granted to the GDC.

#### FISCAL IMPACT:

The GDC will be an independent entity, so the primary costs imposed on the GDC by the bill will not be borne directly by the State or any local government unit. The bill does provide for the State to enter into a memorandum of understanding (mou) in which the State pays for half of the non-federal share of costs for the construction of the Portal Bridge, new hudson tunnels, repair of the existing tunnels, and the hudson yards right-of-way preservation. These projects are likely to cost approximately \$15 billion. Assuming half of that cost is covered by Amtrak and federal grants, that would leave \$7.5 billion in State costs, and \$3.75 billion for New Jersey's share. That cost could be mitigated by contributions from the Port Authority of NY and NJ which count toward each state's share on a 50:50 basis. The composition of the New Jersey share is unclear until the mou is executed. If the mou provides for tolls and changes to NJ Transit, then NJ Transit will have to pay those costs out of operating revenues, which could be realized as State costs due to NJ Transit's reliance upon State operating subsidies, or require increased passenger fares on NJ Transit riders. Otherwise, the State would likely fund its share

through the State capital program which would only impact the composition of already statutorily authorized capital expenditures.

Additionally, the bill's exemption of the GDC from property taxes for itself and its contractors is likely to reduce local property tax revenue, and the expansion of eminent domain power may also reduce local tax revenue while having a neutral impact on the State, since the GDC must pay for the State's cost in exercising eminent domain powers.

STATEMENT TO  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 5570**

with Senate Floor Amendments  
(Proposed by Senator WEINBERG)

ADOPTED: JUNE 20, 2019

These Senate floor amendments provide that each commissioner of the Gateway Development Commission (“commission”) is to be appointed by the Governor, with the advice and consent of the Senate. The amendments provide that the Governor may appoint the individual serving as trustee of the Gateway Program Development Corporation, a New Jersey nonprofit corporation, at the time of the effective date of the bill, to the office of commissioner. If the Governor determines to appoint the individual serving as trustee of the Gateway Program Development Corporation, that individual may be seated without the advice and consent of the Senate and notwithstanding the requirement that commissioners are required to be resident voters of the State of New Jersey.

The amendments clarify that all vacancies in the office of commissioner, including any vacancy in the office of the commissioner who is authorized to be appointed without advice and consent, are to be filled through appointment by the Governor, with the advice and consent of the Senate.

The amendments further provide that the commissioner who is to serve as co-chairperson is required to be a resident voter of the State of New Jersey and to have been a resident voter of the State for at least the two years immediately preceding selection as co-chairperson.

**LEGISLATIVE FISCAL ESTIMATE**  
**[FIRST REPRINT]**  
**ASSEMBLY COMMITTEE SUBSTITUTE FOR**  
**ASSEMBLY, No. 5570**  
**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

DATED: JUNE 27, 2019

**SUMMARY**

**Synopsis:** Establishes Gateway Development Commission with certain powers and responsibilities.

**Type of Impact:** Potential State expenditure increase; potential State and local revenue decrease

**Agencies Affected:** New Jersey Transit Corporation, Department of Transportation, Local Governments

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Multi-year Impact During Construction of Gateway Project</u></b>
<b>State Expenditures</b>	Indeterminate Increase
<b>State and Local Revenue</b>	Indeterminate Decrease

- The Office of Legislative Services (OLS) concludes that the bill will result in an indeterminate increase in State expenditures and an indeterminate decrease in State and local revenues over a multi-year period of uncertain duration.
- The bill requires the states of New Jersey and New York and the Port Authority of New York and New Jersey to enter into a memorandum of understanding committing each State to provide one-half of the non-federal share of the costs of phase one of the Gateway Project. Phase one may cost about \$15 billion, but this estimate may differ in large degree from actual project costs. Assuming a 50 percent federal share of costs, the bill commits New Jersey to funding \$3.75 billion, less any contribution from the Port Authority of New York and New Jersey, whose contributions are credited on a 50:50 basis between the states. While this may not vary from any current plan to undertake and fund the improvements defined by the bill as phase one of the Gateway Project, the bill affirms in law the State’s financial participation in phase one of the project, and therefore results in increased State expenditures.
- The bill does not establish the manner by which the State will meet its financial commitment. Previous actions to finance components of phase one involve issuance of long-term

obligations, indicating that State costs will exceed the nominal cost share noted above due to interest and other costs of capital financing.

- The bill authorizes the Gateway Development Commission (GDC) to impose tolls and fees upon project users, of which NJ Transit is predominant. Since NJ Transit requires an annual State operating subsidy, State appropriations for that subsidy could increase if tolls are imposed. Because any such toll charges upon NJ Transit count toward the State's share of project costs, this impact is part of, not in addition to, the total cost impact of the bill.
- The bill provides the GDC with State and local tax exemptions with regard to property it uses, which extends to its agents and contractors using GDC property to facilitate the project. This will potentially result in State and local revenue losses of indeterminate amounts.
- The Gateway Project is currently stalled while awaiting federal grant awards through the federal Capital Investment Grant program and federal environmental and permitting approvals. The fiscal impacts of this bill will likely not occur until those obstacles are overcome.

## **BILL DESCRIPTION**

The bill defines the Gateway Project and requires the states of New Jersey and New York and the Port Authority of New York and New Jersey to enter into a memorandum of understanding committing each State to provide one-half of the non-federal share of costs of phase one of the project and, if agreed to in an amendment to the memorandum, for phase two of the project or portions thereof. The Gateway Project is intended to maintain and increase passenger rail capacity, reliability, safety, and security between New Jersey and New York and consists of component projects divided into phase one and phase two. Phase one includes the Hudson Tunnel project; the Portal North Bridge project; and the Hudson Yards right-of-way preservation project. The bill leaves open the projects which are to be included in phase two, which is subject to a memorandum of understanding between the two states.

The bill also establishes the Gateway Development Commission ("GDC") to facilitate the Gateway Project. The seven-member GDC is to coordinate the activities of governmental entities involved in the project, pursue efforts to assist federal and state agencies and other entities to further passenger rail transportation between the two states, qualify for financial assistance, loans, grants, or other funding that may be available for the project, accept, collect, and receive funds pursuant to a memorandum of understanding with both States' governors and the Port Authority of New York and New Jersey, and establish, levy, and collect tolls and fees payable by entities using the project. Any revenue from tolls or fees counts toward the New Jersey share of funding pursuant to the memorandum of understanding.

Among the powers of the GDC are to: facilitate the Gateway Project through contracts and agreements; sue and be sued; accept and expend funds; acquire property, including by condemnation, and manage that property and develop undeveloped property as necessary or appropriate; (5) make, procure, enter into, execute, and deliver contracts; (6) make applications for and accept funding, permits, authorizations, and approvals as may be necessary; (7) enter into agreements with a public or private entity or entities to facilitate the project and for use of the project; issue or guarantee bonds, notes, or other evidence of indebtedness, enter into loan agreements and otherwise borrow funds, or incur indebtedness; appoint officers and employees; indemnify individuals and entities; and establish or acquire subsidiaries.



The commission is exempt from any taxes or assessments levied by either state or its local governments on any property owned by the GDC or used for the facilitation of the project, or any income or revenue from facilitation of the project. The commission is authorized to enter into a voluntary agreement with any local government to pay, in lieu of taxes, an annual sum for any real property acquired and owned by the commission. The voluntary agreement is not to provide for payment of an amount in excess of the amount last paid as taxes upon the real property prior to the time the commission acquired the real property.

The bill's provisions expire 15 years from enactment if the GDC has not obtained federal funding necessary to facilitate phase one of the project.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None provided.

### ***OFFICE OF LEGISLATIVE SERVICES***

The Office of Legislative Services (OLS) concludes that the bill will, over a multi-year period of uncertain duration, result in an indeterminate increase in State expenditures and an indeterminate decrease in State and local revenues. The bill requires the States of New Jersey and New York and the Port Authority of New York and New Jersey to enter into a memorandum of understanding committing each State to provide one-half of the non-federal share of the costs of phase one of the Gateway Project. Cost estimates submitted to the federal government through federal grant applications have set the cost of phase one at about \$15 billion. Assuming a 50 percent federal share of costs, that would leave \$7.5 billion to be covered by the states, or approximately \$3.75 billion for the State of New Jersey, less any contribution from the Port Authority of New York and New Jersey, whose contributions are credited on a 50/50 basis between the states. The federal share of funding is undetermined, actual project costs may differ in large degree from current project cost estimates, and capital financing is likely to add interest and other costs to amount estimated in the grant applications cited above, so the impact of New Jersey's commitment made through this bill is not subject to precise estimate.

The bill does not establish the manner by which the State will meet its financial commitment. The Port Authority of New York and New Jersey has already allocated \$1.9 billion in its 10 year capital program in support of the Gateway Project that will presumably be available to advance the project, and the New Jersey Economic Development Authority (EDA) has authorized \$600 million in bonds for the advancement of the Portal Bridge, a component of the Gateway Project. The remaining amount will likely be provided pursuant to the memorandum of understanding through some combination of tolling on NJ Transit and additional State bonding through the EDA or the Transportation Trust Fund Authority.

The establishment of the seven-member Gateway Development Corporation (GDC), a bi-state authority, is for the purpose of facilitating and coordinating the financing and undertaking of the project. The GDC is empowered to issue indebtedness to assist in financing the project, and may also receive and expend funds from federal, state and other sources in furtherance of the project. The only power accorded the GDC to raise revenue is the power to impose tolls and other charges for use of the project, and only if granted in the memorandum of understanding for tolls on NJ Transit. None of these actions impose costs on the State not already encompassed by the State's commitment to project funding through the memorandum of understanding. Tolls

imposed by the GDC on NJ Transit as the predominant user of the project, regardless of whether the impact of those tolls falls on riders or the State through its annual operating subsidy to NJ Transit, are considered part of the State' overall commitment to project costs.

The provision that the GDC is not required to pay any State or local taxes or assessments of any character upon any of the property used by it or its agents or contractors for facilitation of the Project, or any income or revenue therefrom, including any profit from a sale, lease or exchange, or in connection with the transfer thereof or of any real property interest therein, will result in State and local revenue loss of indeterminate amount. While property owned by public entities and used for public purposes is typically exempt from local property taxes, other property use and economic activity is likely to be tax-exempt as well. The OLS has no basis for forecasting the amount of forgone tax revenue since that impact is to be determined by myriad possible future decisions.

Upon enactment of this bill, the GDC would take over the Portal Bridge project and the Hudson Tunnel project, although NJ Transit appears likely to continue as the lead construction entity for the Portal Bridge. If federal approvals are granted, which are currently pending, the GDC could be able to advance both projects relatively quickly, using previously committed funds to begin acquiring land and entering into toll or fee agreements so that the agency can bond to acquire capital funds to further construction.

The Gateway Project is currently stalled while awaiting federal grant awards through the federal Capital Investment Grant program and federal environmental and permitting approvals. The fiscal impacts of this bill will likely not occur until those obstacles are overcome.

*Section: Authorities, Utilities, Transportation and Communications*  
*Analyst: Patrick Brennan*  
*Principal Fiscal Analyst*  
*Approved: Frank W. Haines III*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# SENATE, No. 3918

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JUNE 10, 2019

**Sponsored by:**

**Senator LORETTA WEINBERG**

**District 37 (Bergen)**

**Senator PATRICK J. DIEGNAN, JR.**

**District 18 (Middlesex)**

**Senator THOMAS H. KEAN, JR.**

**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**

As introduced.



**(Sponsorship Updated As Of: 6/18/2019)**

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) This act shall be known and may be cited as  
9 the “Gateway Development Commission Act.”

10

11 2. (New section) Gateway Development Commission.

12 a. The Legislature finds and declares that: the State of New  
13 Jersey and the State of New York and their respective citizens share  
14 a common interest to preserve the functionality and strengthen the  
15 resiliency of long-distance and commuter rail infrastructure  
16 between New Jersey and New York, including passenger rail  
17 infrastructure owned, controlled, or utilized by the National  
18 Railroad Passenger Corporation, also known as “Amtrak”; the two  
19 states and their respective citizens share the benefits of the existing  
20 interstate passenger rail infrastructure between the two states,  
21 including the existing North River Tunnel; interstate passenger rail  
22 service and infrastructure is vital to the economies of New Jersey  
23 and New York; because of the passage of time and damage caused  
24 by natural disasters, both states recognize the existing interstate  
25 passenger rail infrastructure, including the existing North River  
26 Tunnel, is at risk of system failures that could result in prolonged  
27 service disruptions that would severely damage the economies of  
28 the two states and many other portions of the economy of the  
29 Northeast Corridor; both states recognize the urgent need to  
30 undertake projects necessary to create additional 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 the state of New  
42 Jersey and the State of New York shall equally divide the financial  
43 burdens that constitute the local share of the total costs of the  
44 Gateway Program, with 50 percent of the local share to be paid by  
45 each state, and further determines that there is a need to endorse and

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

**Matter underlined thus is new matter.**

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

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

23

24 3. (New section) Definitions.

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

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

32 "Board" means the Board of Commissioners of the Commission.

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

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

41 "Facilitate" or "facilitation" means the planning, designing,  
42 construction, reconstruction, replacement, approval of works,  
43 rehabilitation, repair, alteration, improvement, extension, and  
44 management of matters directly associated with the Gateway  
45 Program.

46 "Full Funding" means the sum of commitments to fund, from  
47 sources deemed by the Commission to be creditworthy, plus  
48 Commission cash-on-hand, plus such other sources of funding

1 deemed certain to be available as and when required, found by the  
2 Commission to be sufficient to Facilitate the Gateway Program.

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

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

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

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

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

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

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

47 “Portal North Bridge project” means a project to replace the  
48 existing Portal Bridge over the Hackensack River between Secaucus

1 and Kearny, New Jersey with a new, high-level, two-track fixed rail  
2 bridge.

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

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

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

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

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

27

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

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

36 (1) Facilitate the Gateway Program;

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

44 (3) Act as a lead agency for the Facilitation of the Gateway  
45 Program and to act as the recipient of all Gateway Program funds  
46 and as the project lead for all component projects of the Gateway  
47 Program, unless one of the other partner agencies or entities is  
48 designated as the project sponsor. The Commission is hereby

1 intended to qualify for, authorized, and empowered to apply for and  
2 accept, financial assistance, loans, grants, or any other funding for  
3 such purposes under federal, state, or local laws, and to make  
4 application directly to the appropriate officials or agencies for the  
5 application for and receipt of federal, state, or local assistance,  
6 loans, grants, or any other funding in aid of any of the purposes of  
7 P.L. , c. (C. ) (pending before the Legislature as this bill);

8 (4) Pursue efforts to assist federal or state agencies and other  
9 entities to fulfill their goals set forth in federal law or the laws of  
10 the State of New York or the State of New Jersey to further  
11 passenger rail transportation between the states, including 49 U.S.C.  
12 s.24901 et seq.; and

13 (5) Take any and all actions authorized by P.L. , c. (C. )  
14 (pending before the Legislature as this bill) which are or may be  
15 necessary or appropriate to constitute and maintain itself as an  
16 applicant eligible to qualify to apply for and be awarded financial  
17 assistance, loans, grants, or other funding as may be available for  
18 the Gateway Program, including that awarded by federal, state, and  
19 local governments and the agencies thereof.

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

26

27 5. (New section) Board of Commissioners.

28 a. The Commission shall consist of nine commissioners, three  
29 resident voters from the State of New York, three resident voters  
30 from the State of New Jersey, and three individuals appointed  
31 directly by the Amtrak board of directors. The commissioners  
32 appointed by Amtrak shall serve to represent Amtrak's interest, as  
33 owner-operator of the Northeast Corridor, in the work to be  
34 undertaken by the Commission. The New York commissioners  
35 shall be chosen by the state of New York and the New Jersey  
36 commissioners shall be chosen by the state of New Jersey in the  
37 manner and for the terms fixed and determined from time to time by  
38 the legislature of each state respectively. Any commissioner  
39 appointed to the board shall have experience in one or more of the  
40 following areas: transportation, public administration, business  
41 management, finance, accounting, law, engineering, land use, urban  
42 and regional planning, management of large capital projects, labor  
43 relations, or have experience in some other area of activity central  
44 to the mission of the Commission.

45 b. Commissioners shall serve without compensation, but the  
46 Commission may, within the limits of funds appropriated or  
47 otherwise made available to it, reimburse commissioners for actual



1 expenses necessarily incurred in the discharge of their official  
2 duties.

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

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

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

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

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

42 h. Board Training. Individuals appointed to the board of  
43 commissioners shall participate in training approved by the chief  
44 ethics and compliance officer in consultation with the inspector  
45 general of the Commission regarding their legal, fiduciary, financial  
46 and ethical responsibilities as commissioners of the Commission  
47 within six months of appointment to the Commission. The  
48 commissioners shall participate in continuing training as may be

1 required to remain informed of best practices, regulatory and  
2 statutory changes relating to the effective oversight of the  
3 management and financial activities of commissions or public  
4 authorities and adhere to the highest standards of responsible  
5 governance.

6 i. Recusals.

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

18 (2) For the purposes of this subsection:

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

21 "Interest" means: if the business organization is a partnership,  
22 the board member or board member's immediate family is a partner  
23 or owner of 10 percent or more of the assets of the partnership, or if  
24 the business organization is a corporation, the board member or the  
25 board member's immediate family owns or controls 10 percent or  
26 more of the stock of the corporation, or serves as a director or  
27 officer of the corporation.

28 j. Financial Disclosure.

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

33 (2) (a) The commissioners appointed by the State of New York  
34 shall file annual financial disclosure statements pursuant to section  
35 73-a of the public officers law.

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

39 (c) In addition to the financial disclosures required of the  
40 commissioners, financial disclosures of employees shall, at a  
41 minimum, be required of the chief executive officer, the general  
42 counsel, the comptroller, the treasurer, the inspector general,  
43 employees who hold policy-making positions as determined by the  
44 general counsel of the Commission, and employees whose base  
45 salary, either in the current or previous year, exceeds \$150,000,  
46 which shall be adjusted for inflation annually in accordance with  
47 the consumer price index for all urban wage earners and clerical  
48 workers (CPI-W) as calculated by the federal government. The

1 financial disclosures shall be updated not less than annually and  
2 shall be made available on the Commission's website.

3

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

5 a. The chairperson of the Commission shall serve from among  
6 the commissioners appointed by the state of New Jersey and the  
7 commissioners appointed by the state of New York. The initial  
8 chairperson shall be one of the commissioners appointed by the  
9 state of New York and shall serve a one-year term. Following the  
10 initial one-year term, the chairperson shall be one of the  
11 commissioners appointed by the state of New Jersey. Thereafter,  
12 the chairpersonship shall alternate between commissioners from  
13 each state with each chairperson serving for a one-year term. The  
14 commissioner who shall serve as chairperson from each state shall  
15 be decided in accordance with the laws of each respective state.  
16 One of the commissioners appointed by Amtrak shall serve as vice  
17 chairperson, at the discretion of the Amtrak board of directors.

18 b. The Commission shall meet regularly as it may determine.  
19 Meetings shall be held at such times and places as the chairperson  
20 of the Commission deems appropriate. To the maximum extent  
21 practicable, meetings shall be held on an alternating basis in New  
22 Jersey and New York.

23 c. The powers of the Commission may be exercised by the  
24 commissioners at a meeting duly noticed and held where a majority  
25 of commissioners are present. Each party to the Commission may  
26 cast one collective vote on any motion, resolution, or other action of  
27 the board. The commissioners appointed by the State of New York  
28 shall cast one collective vote in a manner determined by the laws of  
29 the State of New York. The commissioners appointed by the State  
30 of New Jersey shall cast one collective vote in a manner determined  
31 by the laws of the State of New Jersey. The commissioners  
32 appointed by the board of directors of Amtrak shall cast one  
33 collective vote in a manner determined by the Amtrak board of  
34 directors. Action may be taken and motions and resolutions  
35 adopted by the Commission at any meeting thereof only through the  
36 unanimous affirmative vote of each party to the Commission. Each  
37 state reserves the right to provide by law for the exercise of a veto  
38 power by the governor thereof over any action of any commissioner  
39 appointed therefrom. The commissioners shall adopt bylaws  
40 providing for attendance protocols, voting procedures, and other  
41 matters related to the conduct of business by the Commission.

42 d. Board Committees.

43 (1) The board of commissioners shall establish a committee  
44 structure that shall include, but need not be limited to, the following  
45 responsibilities:

46 (a) a governance responsibility to be assigned to a committee  
47 comprised of not fewer than three commissioners who shall possess  
48 the necessary skills to undertake the governance duties and

1 functions. Such committee shall be comprised of not fewer than  
2 one commissioner appointed by each appointing party. It shall be  
3 the responsibility of the members of this committee to: keep the  
4 board informed of current best governance practices; review  
5 corporate governance trends; update the commission's corporate  
6 governance principles; examine ethical and conflict of interest  
7 issues; perform board self-evaluations; investigate term limits,  
8 reappointments, and board responsibilities; develop by-laws which  
9 include rules and procedures for the conduct of board business; and  
10 advise the Commission on the skills and experiences required of  
11 potential commissioners;

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

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

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

40 e. 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  
43 P.L. , c. (C. ) (pending before the Legislature as this bill),  
44 which agents may include private consultants and persons employed  
45 by or acting as a consultant for the federal government, the State of  
46 New Jersey, any local government thereof, the State of New York,  
47 any local government thereof, any agency, instrumentality,  
48 department, commission, or authority of any one or more of the

1 foregoing, any bi-state agency, or of Amtrak, and each such  
2 government and enumerated party is authorized to provide any such  
3 assistance and services to the Commission.

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

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

15 h. The Commission shall:

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

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

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

29 (4) establish a policy requiring all commissioners, officers, and  
30 employees with decision-making authority to maintain records  
31 regarding contact with lobbyists. As used in this subsection:  
32 "contact" means any conversation, in person or by telephonic or  
33 other electronic means, or correspondence between any lobbyist  
34 engaged in the act of lobbying and any person within the  
35 Commission who can make or influence a decision on the subject of  
36 the lobbying on the behalf of the Commission, and shall include, at  
37 a minimum, all members of the board of commissioners and all  
38 officers of the Commission. "Lobbyist" shall have the same  
39 meaning as defined in the laws or, rules or regulations of either  
40 state, and "lobbying" shall mean and include any attempt to  
41 influence: the adoption or rejection of any rule or regulation having  
42 the force and effect of law by the Commission, the outcome of any  
43 proceeding by the Commission to establish, levy, or collect fees,  
44 tolls, charges, or fares, and the authorization, approval or award of  
45 any agreements, contracts, or purchase orders, including any  
46 settlement of Commission claims, or any extension, amendment, or  
47 modification of any existing agreement, contract, or order; and

1 (5) have an efficiency study of the Commission and its  
2 operations conducted by an independent entity upon the request of  
3 the governors of New York and New Jersey, and if no request is  
4 made, no longer than every three years.

5 i. Whistleblower program.

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

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

12 (b) offering advice regarding employee rights under applicable  
13 state and federal laws and advice and options available to all  
14 persons; and

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

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

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

28 (3) As used in this subsection:

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

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

39 j. Inspector General.

40 (1) The inspector general shall be responsible for receiving and  
41 investigating, where appropriate, all complaints regarding fraud,  
42 waste, and abuse by commissioners, officers, and employees of the  
43 Commission or third-parties doing business with the Commission.  
44 The inspector general shall also be responsible for conducting  
45 investigations upon the inspector general's own initiative, as the  
46 inspector general shall deem appropriate.

47 (2) The inspector general shall inform the board of  
48 commissioners and the chief executive officer of allegations

1 received by the inspector general and the progress of investigations  
2 related thereto, unless special circumstances require confidentiality.

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

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

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

15 administer oaths or affirmations and examine witnesses under  
16 oath;

17 require the production of any books and papers deemed relevant  
18 or material to any investigation, examination, or review;

19 notwithstanding any law to the contrary, examine and copy or  
20 remove documents or records of any kind prepared, maintained, or  
21 held by the Commission and its subsidiaries;

22 interview any officer or employee of the Commission or its  
23 subsidiaries on any matter related to the performance of such officer  
24 or employee's official duties. To the extent that the terms and  
25 conditions of employment of any employee are established by  
26 collective negotiations, any interview conducted pursuant to this  
27 paragraph must be in accordance with any applicable provisions of  
28 the current, or most recent, if expired, collective negotiations  
29 agreement covering the terms and conditions of employment of the  
30 employee;

31 monitor the implementation by the Commission of any  
32 recommendations made by the inspector general; and

33 perform any other functions that are necessary or appropriate to  
34 fulfill the duties and responsibilities of office.

35 k. Open Meetings.

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

1 matter in which the release of information would impair a right  
2 to receive funds from the government of the United States;  
3 material the disclosure of which would constitute an unwarranted  
4 invasion of individual or personal privacy;  
5 collective bargaining agreement, or the terms and conditions  
6 which are proposed for inclusion in any collective bargaining  
7 agreement, including the negotiation of the terms and conditions  
8 thereof with employees or representatives of employees of the  
9 Commission;  
10 matter involving the purchase, lease, or acquisition of real  
11 property with Commission funds, the proposed acquisition of  
12 securities, the sale or exchange of securities held by the  
13 Commission, or the investment of Commission funds, if public  
14 discussion of the matter would adversely affect the public interest;  
15 matter which would imperil the public safety if disclosed;  
16 pending or anticipated litigation or contract negotiation in which  
17 the Commission is, or may become, a party, or matters falling  
18 within the attorney-client privilege, to the extent that confidentiality  
19 is required for the attorney to exercise the attorney's ethical duties  
20 as a lawyer;  
21 contract negotiations disclosure of which would imperil the  
22 Commission's position or an outcome in the best interest of the  
23 Commission, its mission, and the public;  
24 matter involving the employment, appointment, termination of  
25 employment, terms and conditions of employment, evaluation of the  
26 performance of, promotion or disciplining of any specific  
27 prospective officer or employee or current officer or employee  
28 employed or appointed by the Commission, unless all the individual  
29 employees or appointees whose rights could be adversely affected  
30 request in writing that the matter or matters be discussed at a public  
31 meeting; or  
32 deliberation of the Commission occurring after a public hearing  
33 that may result in the imposition of a specific civil penalty upon the  
34 responding party or the suspension or loss of a license or permit  
35 belonging to the responding party as a result of an act or omission  
36 for which the responding party bears responsibility.  
37 (2) The Commission shall make meeting agendas available to  
38 the public at least 72 hours before each meeting of the board and  
39 each meeting of each committee. In addition, the Commission shall  
40 send via electronic mail the agenda and public documents  
41 pertaining to a board or committee meeting to the public  
42 information office of each state's legislature at least 72 hours before  
43 the meeting. Public notice of the time and place of a meeting shall  
44 be provided to appropriate media outlets, shall be conspicuously  
45 posted in one or more designated areas, and shall be conspicuously  
46 posted via the Commission's official website at least five business  
47 days before the meeting.



1 (3) The Commission shall make available to the public  
2 documents in the following manner: the agenda and public  
3 documents pertaining to a board or committee meeting shall be  
4 available for public inspection at least 72 hours before each meeting  
5 or as soon as practicable at an office of the Commission; and the  
6 agenda and public documents pertaining to a board or committee  
7 meeting shall be posted on the Commission's website.

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

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

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

32 m. Meeting Notice.

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

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

45 n. Freedom of Information.

46 Notwithstanding any law to the contrary, the Commission shall  
47 be deemed an "agency" and treated as such under the laws of New  
48 York, for all purposes under articles 6 and 6-A of the Public

1 Officers Law, and shall be deemed a "public agency" and treated as  
2 such under New Jersey, P.L.1963, c.73 (C.47:1A-1 et seq.),  
3 pertaining to the disclosure of government records.

4 o. Legislative hearings.

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

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

33

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

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

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

43 b. Serve as the lead agency responsible for cooperating with  
44 federal, state, local, and bi-state agencies, authorities, or  
45 departments, Amtrak, and private parties to Facilitate the Gateway  
46 Program, including entering into agreements specifying a party's  
47 rights and obligations with respect to the Gateway Program, to  
48 create a Gateway Program capable of achieving long-term stability

1 and Full Funding, without obligating the full faith and credit of the  
2 federal government, either state, or any local government thereof, or  
3 any other party, except as explicitly authorized by any party  
4 empowered by law to do so;

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

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

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

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

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

34

35 8. (New section) Powers of the Commission.

36 The Commission shall have the power to undertake the  
37 following:

38 a. Facilitate the Gateway Program, including, but not limited  
39 to, through contracts and agreements and other documents and  
40 instruments which the commission is otherwise authorized to make,  
41 enter into, execute, and deliver; provided, however, that the  
42 facilitation of the project within New York state shall be subject to  
43 article 8 of the New York state labor law, as well as be subject to  
44 sections 200, 240, 241, and 242 of the New York state labor law  
45 and enforcement of prevailing wage requirements pursuant to  
46 applicable law; provided, however, that for the purposes of article  
47 15-A of the New York state executive law only, the Commission  
48 shall be deemed a state agency as that term is used in such article

1 and its contracts and agreements and other documents and  
2 instruments which the commission is otherwise authorized to make,  
3 enter into, execute, and deliver for the Gateway Program shall be  
4 deemed state contracts within the meaning set forth in such article;  
5 provided, however, that the facilitation of the project within the  
6 state of New Jersey shall be subject to chapter 15 of Title 34 of the  
7 Revised Statutes and that each worker employed to perform  
8 construction work in the state of New Jersey pursuant to the  
9 Gateway Program shall be paid not less than the prevailing wage  
10 rate for the worker's craft or trade, as determined by the  
11 Commissioner of Labor and Workforce Development pursuant to  
12 P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005, c.379  
13 (C.34:11-56.58 et seq.); provided, however, that construction  
14 contracts entered into by the Commission where work pursuant to  
15 the contract is conducted in the state of New Jersey shall be subject  
16 to the requirements of section 24 of P.L.1984, c.73 (C.27:1B-24);  
17 and provided, however, the Commission shall not have the authority  
18 to operate or directly engage in transportation services such that the  
19 Commission would be subject to the jurisdiction of the federal  
20 surface transportation board;

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

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

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

42 e. Make, procure, enter into, execute, and deliver contracts and  
43 agreements and other documents and instruments as may be  
44 necessary or appropriate to carry out any power or duty of the  
45 Commission under P.L. , c. (C. ) (pending before the  
46 Legislature as this bill) and to otherwise accomplish any lawful  
47 purpose which the commissioners determine will Facilitate the  
48 Gateway Program, including, without limitation, with the federal

1 government, the State of New Jersey, any local government thereof,  
2 the State of New York, any local government thereof, any agency,  
3 instrumentality, department, commission, or authority of any one or  
4 more of the foregoing, any bi-state agency, Amtrak, any individual  
5 or private firm, entity, or corporation, or with any one or more of  
6 them;

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

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

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

30 i. Coordinate with entities from each state or both states to  
31 issue or guarantee bonds, notes, or other evidence of indebtedness,  
32 enter into loan agreements and otherwise borrow funds, or incur  
33 indebtedness or other future payment obligations for any corporate  
34 purpose, including to effectuate Full Funding, and to assign, pledge,  
35 mortgage, secure, encumber, and use its funds, assets, property, and  
36 revenues for repayment thereof, to be payable out of the funds,  
37 assets, properties, and revenues of the Commission without recourse  
38 to taxation, provided that the borrowing activity has previously  
39 been included as part of the report required pursuant to subsection f.  
40 of section 7 of P.L. , c. (C. ) (pending before the  
41 Legislature as this bill) and was not disapproved by either or both  
42 legislatures or otherwise precluded by conditions placed upon funds  
43 provided by another agency or entity, and further provided that the  
44 Commission shall have no power to pledge the full faith and credit  
45 of the federal government, the State of New Jersey, any local  
46 government thereof, the State of New York, any local government  
47 thereof, or of Amtrak or the Port Authority of New York and New  
48 Jersey in connection with the Gateway Program, or to impose any

1 obligation for payment of the bonds upon the federal government,  
2 the State of New Jersey, any local government thereof, the State of  
3 New York, any local government thereof, or of Amtrak or the Port  
4 Authority of New York and New Jersey, in each case except as set  
5 forth in a binding agreement, or to otherwise commit any party to  
6 incur any liability in excess of its contractual obligations in  
7 connection with the Gateway Program, and provided further that  
8 neither the commissioners nor any person executing any bonds  
9 issued or guaranteed by the Commission shall be liable personally  
10 on such bonds or be subject to any personal liability or  
11 accountability by reason of the issuance thereof;

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

14 k. Appoint such officers and employees as the Commission  
15 may require for the performance of its duties and fix and determine  
16 their qualifications, duties, and compensation, subject to the  
17 provisions of the civil service law, the rules of the civil service  
18 commission of the city, the New York state collective bargaining  
19 law and applicable collective bargaining agreements with regard to  
20 those officers, and employees who are residents of and work in New  
21 York state including engineers, attorneys, consultants, financial  
22 advisors and such other persons or entities as the business of the  
23 Commission may require and subject to the civil service law and  
24 New Jersey collective bargaining law and applicable collective  
25 bargaining agreements with regard to those officers and employees  
26 who are residents of and work in the state of New Jersey including  
27 engineers, attorneys, consultants, financial advisors and such other  
28 persons or entities as the business of the Commission may require.  
29 The Commission shall participate in the New York city employees'  
30 retirement system;

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

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

- 1 n. Indemnify individuals and entities to the extent required to  
2 Facilitate the Gateway Program;
- 3 o. Establish or acquire subsidiaries as required to Facilitate the  
4 Gateway Program;
- 5 p. 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 Gateway Program;
- 8 q. Exercise all other powers as may be necessary or appropriate  
9 in furtherance of, and consistent with, the purposes of P.L. ,  
10 c. (C. ) (pending before the Legislature as this bill), provided  
11 that this subsection shall not be construed to delegate any sovereign  
12 power of either state unless that power has been expressly delegated  
13 to the Commission pursuant to the provisions of P.L. , c.  
14 (C. ) (pending before the Legislature as this bill).

15

16 9. (New section) Commission annual financial reporting.

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

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

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

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

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

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

36  
37 10. (New section) Commission audits and financial statements.

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

42 b. The audit committee of the board of commissioners of the  
43 Commission shall arrange for an independent firm of certified  
44 public accountants to perform an audit of the financial statements of  
45 the Commission each year, in accordance with generally accepted  
46 accounting principles and standards referenced in subsection a. of  
47 this section. Each independent firm of certified public accountants



1 that performs any audit required by this section shall timely report  
2 to the board of the Commission:

- 3 (1) all critical accounting policies and practices to be used; and
- 4 (2) other material written communications, that is not privileged  
5 or confidential, between the independent firm of certified public  
6 accountants and the management of the Commission, including the  
7 management letter along with management's response or plan of  
8 corrective action, material corrections identified, or schedule of  
9 unadjusted differences.

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

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

36 e. The Commission shall not contract with the independent  
37 firm of certified public accountants performing the Commission's  
38 audit for any non-audit services to such Commission  
39 contemporaneously with the audit, unless receiving previous written  
40 approval by the audit committee including:

- 41 (1) bookkeeping or other services related to the accounting  
42 records or financial statements of such Commission;
- 43 (2) financial information systems design and implementation;
- 44 (3) appraisal or valuation services, fairness opinions, or  
45 contribution-in-kind reports;
- 46 (4) actuarial services;
- 47 (5) internal audit outsourcing services;
- 48 (6) management functions or human services;

1 (7) broker or dealer, investment advisor, or investment banking  
2 services; and

3 (8) legal services and expert services unrelated to the audit.

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

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

16

17 11. (New section) Contracts of the Commission.

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

20 "Construction item" means any such item or material used in  
21 construction and which is procured directly by the Commission or  
22 office or any such item or material commonly used in construction  
23 which is procured by a person, other than a municipality, under  
24 contract with the Commission or office.

25 "Office" means the New York office of general services.

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

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

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

41 "Specification" means any description of the physical or  
42 functional characteristics, or of the nature of a material, supply,  
43 equipment, or construction item. It may include a description of any  
44 requirement for inspecting, testing, or preparing a material, supply,  
45 equipment, or construction item for delivery.

46 b. Specifications. The Commission shall create and update  
47 product specifications to ensure that:

1 (1) Specifications do not exclude the use of products  
2 manufactured from secondary materials or require that products be  
3 manufactured from virgin materials only, provided however, the  
4 specifications may include such an exclusion if the Commission  
5 demonstrates that for a particular end use a product containing  
6 secondary materials would not meet necessary performance  
7 standards.

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

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

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

19 c. Ground for cancellation of contract by the Commission.

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

42 d. Disqualification to contract with public authority.

43 Any person who, when called before a grand jury, head of a state  
44 department, temporary state commission or other state agency of the  
45 state of New York or the state of New Jersey, the organized crime  
46 task force in the department of law of the state of New York, head  
47 of a city department, or other city agency, which is empowered to  
48 compel the attendance of witnesses and examine them under oath,

1 to testify in an investigation concerning any transaction or contract  
2 had with the applicable state, any political subdivision thereof, a  
3 public authority or with a public department, agency, or official of  
4 the state or of any political subdivision thereof or of a public  
5 authority, refuses to sign a waiver of immunity against subsequent  
6 criminal prosecution or to answer any relevant questions concerning  
7 such transaction or contract, and any firm, partnership, or  
8 corporation, of which he is a member, partner, director, or officer  
9 shall be disqualified from thereafter selling to or submitting bids to  
10 or receiving awards from or entering into any contracts with the  
11 Commission or any official of the Commission, for goods, work, or  
12 services, for a period of five years after such refusal or until a  
13 disqualification shall be removed pursuant to the provisions of  
14 subsection e. of this section.

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

47 e. Removal of disqualification of public contractors by  
48 petition.

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

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

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

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

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

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

45 Every bid or proposal hereafter made to the Commission or to  
46 any official of the Commission, where competitive bidding is  
47 required by statute, rule, regulation, or local law, for work or  
48 services performed or to be performed or goods sold or to be sold,

1 shall contain the following statement subscribed by the bidder and  
2 affirmed by such bidder as true under the penalties of perjury:

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

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

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

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

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

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

44 g. Procurement contracts.

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

46 "Allowable indirect costs" means those costs incurred by a  
47 professional firm that are generally associated with overhead which  
48 cannot be specifically identified with a single project or contract

1 and are considered reasonable and allowable under specific state  
2 contract or allowability limits.

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

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

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

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

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

47 (3) For purposes of this subsection, procurement contracts shall  
48 mean any written agreement for the acquisition of goods or services

1 of any kind, in the actual or estimated amount of five thousand  
2 dollars or more.

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

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

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

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

41 (d) Requirements for the designation of one or more senior staff  
42 of the Commission to oversee the Commission's programs  
43 established to promote and assist: participation by certified minority  
44 or women-owned business enterprises in the Commission's  
45 procurement opportunities and facilitation of the award of  
46 procurement contracts to such enterprises; the utilization of  
47 certified minority and women-owned business enterprises as  
48 subcontractors and suppliers by entities having procurement



1 contracts with the Commission; and the utilization of partnerships,  
2 joint ventures, or other similar arrangements between certified  
3 minority and women-owned business enterprises and other entities  
4 having procurement contracts with the Commission. Such staff  
5 shall be familiar with the procurement of the types of construction,  
6 financial, legal, or professional services utilized by the  
7 Commission, report directly to the Commission's executive  
8 director, and either directly or through their designees participate in  
9 the procurement process.

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

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

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

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

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

44 Provisions designating the New York division of minority and  
45 women's business development to certify and decertify minority  
46 and women-owned business enterprises through a single process  
47 that meets applicable state and federal requirements;

1 A requirement that each contract solicitation document  
2 accompanying each solicitation set forth the expected degree of  
3 minority and women-owned business enterprise participation based,  
4 in part, on: the potential subcontract opportunities available in the  
5 prime procurement contract; and the availability of certified  
6 minority and women-owned business enterprises to respond  
7 competitively to the potential subcontract opportunities;

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

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

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

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

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

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

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

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

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

46 providing for the Commission to collect and to consult the  
47 specifications of New York state and New Jersey business  
48 enterprises in developing specifications for any procurement

1 contract for the purchase of good where possible, practicable,  
2 feasible and consistent with open bidding, except for procurement  
3 contracts for which the Commission would be expending funds  
4 received from states other than New York or New Jersey. The  
5 Commission shall, where feasible, make use of the stock item  
6 specification forms prepared by the New York commissioner of  
7 general services, and where necessary, consult with the New York  
8 commissioner of the office of general services, in developing such  
9 specifications and make such determinations;

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

37 except for procurement contracts for which the Commission  
38 would be expending funds received from another state, the  
39 Commission shall include in all bid documents provided to potential  
40 bidders a statement that information concerning the availability of  
41 New York state subcontractors and suppliers is available from the  
42 New York state department of economic development, which shall  
43 include the directory of certified minority and women-owned  
44 businesses, and it is the policy of New York state to encourage the  
45 use of New York state subcontractors and suppliers, and to promote  
46 the participation of minority and women-owned businesses where  
47 possible, in the procurement of goods and services;

1 with the cooperation of the community services division of the  
2 New York department of labor and through cooperative efforts with  
3 contractors, providing for the notification of New York state  
4 residents of employment opportunities arising in New York state  
5 out of procurement contracts let by the Commission in an amount  
6 estimated to be equal to or greater than one million dollars; and  
7 promulgating procedures which will assure compliance by  
8 contractors with such notification by requiring contractors to submit  
9 post-award compliance reports documenting their efforts to provide  
10 such notification through listing any such positions with the  
11 community services division, or providing for such notification in  
12 such manner as is consistent with existing collective bargaining  
13 contracts or agreements;

14 including in each set of documents soliciting bids on  
15 procurement contracts to let by the Commission a statement  
16 notifying potential bidders located in foreign countries that the  
17 Commission may assign or otherwise transfer offset credits created  
18 by such procurement contract to third parties located in New York  
19 state; providing for the assignment or other form of transfer of  
20 offset credits created by such procurement contracts, directly or  
21 indirectly, to third parties located in New York state, in accordance  
22 with the written directions of the New York commissioner of  
23 economic development; and providing for the corporation to  
24 otherwise cooperate with the department of economic development  
25 in efforts to get foreign countries to recognize offset credits  
26 assigned or transferred to third parties located in New York state  
27 created by such procurement contracts; and

28 promulgating procedures which will assure compliance with the  
29 federal "Equal Employment Opportunity Act of 1972" (Pub. L. 92-  
30 261), as amended, by contractors of the corporation.

31 (m) For the purposes of this section:

32 "New Jersey business enterprise" means a business enterprise,  
33 including a sole proprietorship, partnership, or corporation, which  
34 offers for sale or lease or other form of exchange, goods which are  
35 sought by the Commission and which are substantially  
36 manufactured, produced, or assembled in New Jersey, or services  
37 which are sought by the Commission and which are substantially  
38 performed within New Jersey.

39 "New Jersey resident" means a natural person who maintains a  
40 fixed, permanent, and principal home located within New Jersey  
41 and to which such person, whenever temporarily located, always  
42 intends to return.

43 "New York resident" means a natural person who maintains a  
44 fixed, permanent and principal home located within New York state  
45 and to which such person, whenever temporarily located, always  
46 intends to return.

47 "New York state business enterprise" means a business  
48 enterprise, including a sole proprietorship, partnership, or

1 corporation, which offers for sale or lease or other form of  
2 exchange, goods which are sought by the Commission and which  
3 are substantially manufactured, produced, or assembled in New  
4 York state, or services which are sought by the Commission and  
5 which are substantially performed within New York state.

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

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

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

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

41 (9) Nothing contained in this section shall be deemed to alter,  
42 affect the validity of, modify the terms of, or impair any contract or  
43 agreement made or entered into in violation of, or without  
44 compliance with, the provisions of this section.

45 h. Comptroller approval of contracts.

46 (1) Except as set forth in paragraph (3) of this subsection, where  
47 the comptroller of the state of New York or the comptroller of the  
48 state of New Jersey determines pursuant to his or her authority to

1 supervise the accounts of the Commission, that contracts or  
2 categories of contracts in excess of one million dollars: to be  
3 awarded by the Commission to a single source, a sole source or  
4 pursuant to any other method of procurement that is not  
5 competitive; or which are to be paid in whole or in part from  
6 monies appropriated by each respective state to the Commission for  
7 such contractual expenditure, require supervision in the form of  
8 prior review and approval of such contracts, and the comptroller of  
9 the state of New York or the comptroller of the state of New Jersey  
10 so notifies the Commission of such determination, then any such  
11 contract entered into subsequent to such notification shall be  
12 submitted to the respective comptroller of the state of New York or  
13 the comptroller of the state of New Jersey for his or her approval  
14 and shall not be a valid enforceable contract unless it shall first  
15 have been approved by the respective comptroller of the state of  
16 New York or the comptroller of the state of New Jersey. Such  
17 notification shall identify the process for submission, the categories  
18 of contracts at issue and the time period for which such submission  
19 is to take place. The comptroller of the state of New York and the  
20 comptroller of the state of New Jersey shall promulgate such rules  
21 and regulations as may be necessary to carry out his or her  
22 responsibilities under this section, including but not limited to the  
23 standards for determining which contracts will be subject to his or  
24 her review and for approving such contracts

25 (2) Where the comptroller of the state of New York or the  
26 comptroller of the state of New Jersey, pursuant to paragraph (1),  
27 has notified the Commission that any contract or category of  
28 contracts shall be subject to his or her approval, the Commission  
29 shall include or cause to be included in each such contract a  
30 provision informing the other party that such contract is subject to  
31 the comptroller of the state of New York or the comptroller of the  
32 state of New Jersey's approval pursuant to the respective  
33 comptroller's authority to supervise the accounts of the  
34 Commission. If the comptroller of the state of New York or the  
35 comptroller of the state of New Jersey has not approved or  
36 disapproved any contract subject to his or her approval within 90  
37 days of submission to his or her office, such contract shall become  
38 valid and enforceable without such approval.

39 (3) This subsection shall not apply to: contracts entered into for  
40 the issuance of commercial paper or bonded indebtedness, other  
41 than contracts with the state of New York or the state of New Jersey  
42 providing for the payment of debt service subject to an  
43 appropriation; contracts of purchase or sale of energy, electricity or  
44 ancillary services made by the Commission on a recognized market  
45 for goods, services, or commodities in question in accordance with  
46 standard terms and conditions of purchase or sale at a market price;  
47 contracts for the purchase, sale, or delivery of power or energy,  
48 fuel, costs, and services ancillary thereto, or financial products

1 related thereto, with a term of less than five years; and contracts  
2 entered into for the procurement of goods, services or both goods  
3 and services made to meet emergencies arising from unforeseen  
4 causes or to effect repairs to critical infrastructure that are necessary  
5 to avoid a delay in the delivery of critical services that could  
6 compromise the public welfare.

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

14  
15 12. (New section) Subsidiaries of the Commission.

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

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

27 c. Within 60 days of the effective date of P.L. , c. (C. )  
28 (pending before the Legislature as this bill), and on or before the  
29 first day of January of each year annually thereafter, any subsidiary  
30 corporation, in cooperation with the Commission, shall provide to  
31 the governor and legislature of each state a report on the subsidiary  
32 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, the majority leader of

1 each house of the legislature of each state, the Chair of the Senate  
2 Finance Committee of New York, the Chair of the Senate Budget  
3 and Appropriations Committee of New Jersey, the Chair of the  
4 Assembly Ways and Means Committee of New York, and the Chair  
5 of the Assembly Budget Committee of New Jersey. For purposes of  
6 this section, as applicable to New York state “majority leader” shall  
7 mean the Speaker of the Assembly of the New York State  
8 Legislature or Temporary President of the Senate of the New York  
9 State Legislature. For purposes of this section, as applicable to the  
10 State of New Jersey “majority leader” shall mean the President of  
11 the Senate or the Speaker of the General Assembly of the State of  
12 New Jersey.

13

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

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

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

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

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

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

43 (4) The board of commissioners shall adopt, within six months of  
44 the effective date of P.L. , c. (C. ) (pending before the  
45 Legislature as this bill), appropriate rules and regulations  
46 concerning disposition, acquisition, and transfer of real property or  
47 any interest in real property by the Commission which shall, at a  
48 minimum, include a requirement that the following information be



1 made available to the board of commissioners at the meeting where  
2 approval of such a disposition, acquisition or transfer is scheduled:

3 a full description of the property;

4 a description of the purpose of the disposition, acquisition, or  
5 transfer;

6 a statement of the value to be received from such a disposition,  
7 acquisition, or transfer;

8 the names of any private parties participating in the disposition,  
9 acquisition, or transfer; and

10 in the case of a property disposition for less than fair market  
11 value, an explanation and a written determination by the board of  
12 commissioners that there is no reasonable alternative to the  
13 proposed below-market value that would achieve the same purpose  
14 of such disposition.

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

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

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

39 b. Capital plan.

40 (1) The Commission shall adopt a 10-year capital plan that is  
41 developed using a comprehensive planning process and risk-based  
42 prioritization that considers asset condition, operational and revenue  
43 impact, threat assessment, customer service, regional benefit, and  
44 regulatory or statutory requirements. The capital plan shall be  
45 dependent upon the availability of sufficient funding and other  
46 resources to pursue the capital projects proposed for the 10-year  
47 period. Performance progress and revisions to reflect changes in  
48 programs, policies, and projects and the environment in which the

1 Commission operates shall be reviewed regularly by a committee  
2 designated by the board of commissioners, and the capital plan shall  
3 be revised periodically as necessary and appropriate, and shall be  
4 reviewed with the board of commissioners annually. The  
5 Commission shall publish an annual report on the status of the  
6 capital program and such report shall be made publicly available on  
7 the Commission's website. Prior to adoption of a capital plan, the  
8 Commission shall make the proposed plan available for public  
9 review and comments on its public website for at least four weeks  
10 prior to approval, and all comments received by the Commission  
11 are to be distributed to the board of commissioners for review prior  
12 to consideration of the capital plan.

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

26 (3) No less than 60 days prior to any board adoption of a capital  
27 plan, as described in paragraph (1) of this subsection, or any major  
28 revision of the last adopted capital plan, the Commission shall:  
29 notify the Assembly and Senate of the New York state legislature  
30 and the General Assembly and Senate of the New Jersey state  
31 legislature of its intention to adopt a capital plan, or any major  
32 revision of the last adopted capital plan; submit to the Assembly  
33 and Senate of the New York state legislature and the General  
34 Assembly and Senate of the New Jersey state legislature the  
35 proposed capital plan, or any proposal constituting a major revision  
36 of the last adopted capital plan, for review by each state legislature;  
37 and make the proposed capital plan, including any proposal  
38 constituting a major revision of the last adopted capital plan,  
39 publicly available on the Commission's website. In either case, the  
40 notice shall recite the major elements of the capital plan to be  
41 adopted.

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

46 (5) The Commission shall conduct a status update public hearing  
47 in New York state and in the State of New Jersey at least once  
48 every three years after the adoption of the capital plan by the

1 Commission. Such public hearing shall be known as “capital status  
2 update hearing” and at such hearing the Commission shall provide  
3 in detail a written description of the status of all capital plan  
4 projects and the costs and the expected costs of those projects. At  
5 such public hearing, the Commission shall provide a financing plan  
6 that identifies the source of funding for each project. The  
7 Commission shall provide an analysis that compares actual and  
8 target performance measures, and a detailed written explanation of  
9 any discrepancy thereof at the public hearing.

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

17

18 14. (New section) Exemption from taxes, local taxes.

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

34 b. The Commission shall, as a matter of policy, conform to the  
35 enactments, ordinances, resolutions, and regulations of the  
36 respective states and local governments where the Gateway  
37 Program is located in regard to the construction and maintenance of  
38 the Gateway Program and in regard to health and fire protection  
39 which would be applicable if the Commission were a private  
40 corporation, to the extent that the Commission finds it practicable to  
41 do so, without interfering with, impairing, or affecting the  
42 efficiency of its purposes under P.L. , c. (C. ) (pending  
43 before the Legislature as this bill), or its ability to effectuate the  
44 Gateway Program upon a self-supporting basis, or its obligations,  
45 duties, and responsibilities to the two states, its bondholders (if any)  
46 and the general public, but the decision of the Commission as to  
47 whether it is practicable so to do shall be controlling. To that end,  
48 the Commission shall submit copies of plans and specifications for

1 buildings and structures to the appropriate state and local  
2 government officials and shall consult with them with respect  
3 thereto, and shall receive their comments and suggestions thereon,  
4 but the Commission shall make the final determination as to which  
5 comments and suggestions to accept in effectuating the Gateway  
6 Program.

7

8 15. (New section) Cooperation with governmental entities.

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

17

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

19 Upon the concurrence of the State of New York, the State of  
20 New Jersey and the State of New York consent to suits, actions, or  
21 proceedings of any form or nature at law, in equity, or otherwise  
22 (including proceedings to enforce arbitration agreements) against  
23 the Commission, and to appeals therefrom and reviews thereof,  
24 except as hereinafter provided. The foregoing consent does not  
25 extend to: (1) suits, actions, or proceedings upon any causes of  
26 action whatsoever accruing before the effective date of P.L. , c.  
27 (C. ) (pending before the Legislature as this bill); (2) suits,  
28 actions, or proceedings upon any causes of action whatsoever, upon,  
29 in connection with, or arising out of any contract, express or  
30 implied, entered into or assumed by or assigned to the Commission  
31 before the effective date of P.L. , c. (C. ) (pending before  
32 the Legislature as this bill) (including any supplement to, or  
33 amendment, extension, or renewal of any such contract, even if  
34 such supplement, amendment, extension, or renewal is made on or  
35 after the effective date of P.L. , c. (C. ) (pending before the  
36 Legislature as this bill)), regardless of whether such cause of action  
37 accrued before or after that date; (3) civil suits, actions, or  
38 proceedings for the recovery of statutory penalties; and (4) suits,  
39 actions, or proceedings for judgments, orders, or decrees  
40 restraining, enjoining, or preventing the Commission from  
41 committing or continuing to commit any act or acts, other than  
42 suits, actions, or proceedings by the Attorney General of New  
43 Jersey or by the Attorney General of New York, each of whom is  
44 hereby authorized to bring such suits, actions, or proceedings in the  
45 attorney general's discretion on behalf of any person or persons  
46 whatsoever who requests the attorney general so to do except in the  
47 cases otherwise excluded by P.L. , c. (C. ) (pending before  
48 the Legislature as this bill); provided, that in any such suit, action,

1 or proceeding, no judgment, order, or decree shall be entered except  
2 upon at least two days' prior written notice to the Commission of  
3 the proposed entry thereof.

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

9  
10 17. (New section) Dissolution.

11 a. The Commission shall dissolve on the first day of the 36th  
12 month following the completion of the Gateway Program, provided  
13 that plans have been adopted for the transfer of the component  
14 projects of the Gateway Program to appropriate agencies,  
15 instrumentalities, or entities, which shall include repayment of or an  
16 arrangement for the full repayment of any bonds or other securities  
17 issued and any other debt incurred for Gateway Program purposes  
18 without impairment of the creditworthiness of either state and that  
19 any receiving agency, instrumentality, or entity enters into an  
20 agreement concerning responsibility for maintenance and upkeep of  
21 the relevant component project, and further provided that Amtrak is  
22 not unduly prejudiced by such dissolution.

23 b. The Governor of New Jersey and the Governor of New York  
24 may jointly determine that dissolution of the Commission on the  
25 first day of the 36th month is impractical and may jointly agree to  
26 delay the dissolution until the first day of the 48th month following  
27 completion of the Gateway Program to resolve any issues  
28 concerning transfer or any component projects or resolution of any  
29 outstanding debt or to remedy any undue prejudice to Amtrak  
30 resulting from dissolution at an earlier date.

31 c. The Commission shall not remain in existence beyond the  
32 first day of the 48th month following completion of the Gateway  
33 Program.

34  
35 18. (New section) Amendment to agreement.

36 The provisions of this agreement may be amended, altered,  
37 supplemented, or repealed from time to time by the action of the  
38 legislature of either state concurred in by the legislature of the  
39 other.

40 For the purposes of this section, "this agreement" means sections  
41 1 through 19 of P.L. , c. (C. ) (pending before the  
42 Legislature as this bill).

43  
44 19. (New section) Severability.

45 If any provision of P.L. , c. (C. ) (pending before the  
46 Legislature as this bill), or the application thereof to any person or  
47 circumstance is held invalid, including as not in accordance with  
48 federal law or federal constitutional requirements, such invalidity

1 shall not affect other provisions or applications of P.L. , c.  
2 (C. ) (pending before the Legislature as this bill) which can be  
3 given effect without the invalid provision or application and to this  
4 end the provisions of P.L. , c. (C. ) (pending before the  
5 Legislature as this bill) are declared to be severable.

6  
7 20. (New section) a. There shall be three commissioners of the  
8 Gateway Development Commission appointed from this State, in  
9 accordance with section 5 of P.L. , c. (C. ) (pending before  
10 the Legislature as this bill), who shall each serve at the pleasure of  
11 the Governor.

12 b. One commissioner shall be appointed by the Governor with  
13 the advice and consent of the Senate. One commissioner shall be  
14 appointed by the Governor upon the recommendation of the  
15 Speaker of the General Assembly. One commissioner shall be  
16 appointed by the Governor upon the recommendation of the  
17 President of the Senate.

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

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

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

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

41 g. Pursuant to subsection c. of section 6 of P.L. , c.  
42 (C. ) (pending before the Legislature as this bill), the  
43 Legislature hereby determines that the collective vote of the New  
44 Jersey members of the Gateway Development Commission shall be  
45 determined by the affirmative vote of at least two of the New Jersey  
46 commissioners.

1       21. (New section) a. The minutes of every meeting of the  
2 Gateway Development Commission held under or within the  
3 purview of P.L. , c. (C. ) (pending before the Legislature as  
4 this bill) shall be forthwith transmitted, by and under the  
5 certification of the secretary thereof, to the Governor of this State.  
6 No action taken at such meeting by any commissioner appointed  
7 from this State shall have force or effect for a period of 10 days,  
8 Saturdays, Sundays, and public holidays excepted, after the minutes  
9 shall have been so transmitted and delivered unless the Governor  
10 shall finally approve the minutes or any part thereof, reciting any  
11 such action, within said 10-day period.

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

20

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

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

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

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

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

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

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

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

47       (g) Make an annual report to the Governor and the Legislature  
48 on the department's operations, and render such other reports as the

1 Governor shall from time to time request or as may be required by  
2 law;

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

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

9 (2) Aeronautics permits;

10 (3) Right-of-way permits;

11 (4) Traffic signal control systems;

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

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

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

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

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

33 (n) Acquire by eminent domain, pursuant to the eminent domain  
34 law and R.S.27:7-22, any property, property rights, or property  
35 interests, including easements, air rights, below-grade and  
36 subsurface rights, hereinafter referred to as "Property Interests,"  
37 including rights on property now or previously designated as  
38 parkland or dedicated to a public use, provided that such Property  
39 Interests are located in the State and, in the judgment of the  
40 commissioner, are necessary or appropriate for the construction,  
41 reconstruction, development, redevelopment, use, occupancy,  
42 operation, and maintenance of passenger rail transportation  
43 facilities and ancillary facilities between New Jersey and New York  
44 Penn Station, in a corridor beginning at or near Newark Penn  
45 Station and ending at the boundary of the State of New Jersey in the  
46 Hudson River. Property Interests may be acquired pursuant to this  
47 subsection notwithstanding any requirement in R.S.27:7-36 or any  
48 other provision of law, general, special, charter, or local, and



1 regardless of whether the Property Interests are or were dedicated to  
2 public use. All of such Property Interests may be acquired by the  
3 commissioner pursuant to applicable provisions of the eminent  
4 domain law and R.S.27:7-22, provided that any acquisition of  
5 Property Interests pursuant to this subsection shall be contingent on  
6 the commissioner entering into an agreement addressing such  
7 acquisition with the Gateway Development Commission, approved  
8 in accordance with that entity's authorizing statute, and the  
9 Gateway Development Commission shall agree to pay the costs  
10 incurred by the commissioner in acquiring such Property Interests  
11 pursuant to the eminent domain law. Notwithstanding any other  
12 provision of law, general, special, charter, or local, following  
13 acquisition, the commissioner may use such property together with  
14 property already owned or held, to: enter into contracts to sell,  
15 transfer, lease, or exchange with, or grant easements, licenses,  
16 permits, concessions, or other authorizations to, the Gateway  
17 Development Commission sufficient to permit the construction,  
18 reconstruction, development, redevelopment, use, occupancy,  
19 operation, and maintenance by the Gateway Development  
20 Commission or its permittees and successors, of the aforementioned  
21 passenger rail facilities and ancillary facilities. Authorization is  
22 hereby given to the commissioner to do all things necessary or  
23 appropriate to carry out the purposes of this subsection.

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

25

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

34

35

36

#### STATEMENT

37

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

1 Loop project; the Secaucus Junction renovation and expansion  
2 project; and the Penn Station South project.

3

4 *Purposes*

5

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

15

16 *Commission membership*

17

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

28

29 *Organization of the commission*

30

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

37 The powers of the GDC may be exercised by the commissioners  
38 at a meeting duly noticed and held where a majority of  
39 commissioners are present. New Jersey, New York, and Amtrak  
40 each possess one collective vote, which is to be cast in accordance  
41 with the laws of New Jersey, the laws of New York, and as  
42 determined by Amtrak, respectively. Under the bill, the New Jersey  
43 vote may be cast only upon the affirmative vote of two New Jersey  
44 commissioners. Action may be taken and motions and resolutions  
45 adopted by the GDC only through the unanimous affirmative vote  
46 of each party to the GDC. The bill provides that each state may  
47 provide for a gubernatorial veto over any action of any  
48 commissioner appointed therefrom. The bill provides that the

1 Governor of New Jersey has 10 business days after the meeting  
2 minutes are provided to the Governor to review actions taken at a  
3 GDC meeting. During that 10-day period, the Governor may  
4 approve the meeting minutes or may veto any action therein recited  
5 as having been taken by any New Jersey commissioner. If the  
6 Governor does not return the meeting minutes within 10 days, the  
7 minutes are deemed approved.

8

9 *Transparency and accountability measures*

10

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

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

35 All meetings of the GDC are required to be open to the public  
36 and members of the news media, except for when the GDC meets in  
37 executive session. The bill provides for specific exceptions to the  
38 requirement that the meeting be open to the public. Meeting  
39 agendas are required to be made available to the public at least 72  
40 hours before a meeting and public notice of the time and place of  
41 the meeting is required to be provided to media outlets and  
42 conspicuously posted in designated areas and on the GDC's website  
43 at least five days before the meeting. The public is reserved at least  
44 30 minutes at each board meeting to speak on any topic on an  
45 agenda. The GDC is required to keep reasonably comprehensible  
46 minutes of all meetings and to make those minutes available on its  
47 website within two weeks from the date of the meeting. The GDC  
48 is required to make all reasonable efforts to ensure that meetings are

1 held in facilities that permit barrier-free physical access to people  
2 with disabilities. The bill subjects the GDC to the New York  
3 freedom of information law for requests filed in New York and to  
4 the New Jersey open public records law for requests filed in New  
5 Jersey. The GDC is required to appear before a committee of the  
6 legislative houses of each state upon request from that house's  
7 presiding officer. Each legislative house is entitled to require two  
8 such appearances in each calendar year. The bill specifies which  
9 officers are required to appear, unless otherwise agreed to by the  
10 presiding officer of the legislative house making the request.

11

12 *Duties of the GDC*

13

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

29

30 *Powers of the GDC*

31

32 The powers of the GDC are to: (1) facilitate the Gateway  
33 Program through contracts and agreements and other documents  
34 and instruments, provided that the GDC complies with workers  
35 compensation, prevailing wage, and other labor laws in each  
36 respective state; (2) sue and be sued; (3) accept and expend funds;  
37 (4) acquire property, including by condemnation, and, solely in  
38 furtherance of the purposes of the GDC, manage that property and  
39 develop undeveloped property necessary or appropriate to facilitate  
40 the Gateway Program; (5) make, procure, enter into, execute, and  
41 deliver contracts; (6) make applications for and accept funding,  
42 permits, authorizations, and approvals as may be necessary to  
43 facilitate the Gateway Program; (7) enter into agreements with a  
44 private entity or entities to facilitate the Gateway Program;  
45 (8) adopt its own public procurement rules and guidelines;  
46 (9) coordinate with entities from each or both states to issue or  
47 guarantee bonds, notes, or other evidence of indebtedness, enter  
48 into loan agreements and otherwise borrow funds, or incur

1 indebtedness; (10) acquire and hold securities for investment  
2 purposes; (11) appoint officers and employees; (12) obtain  
3 insurance; (13) cooperate with governmental entities or private  
4 entities; (14) indemnify individuals and entities to the extent  
5 required to facilitate the Gateway Program; (15) establish or acquire  
6 subsidiaries as required to facilitate the Gateway Program; (16)  
7 utilize the existing labor force in the states and foster labor harmony  
8 in allowing for adoption of efficient labor work rules and practices  
9 during construction of the Gateway Program; and (17) exercise all  
10 other powers as may be necessary or appropriate.

11

12 *Financial reporting and audit and financial statements*

13

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

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

27

28 *Contracting*

29

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

40

41 *Subsidiaries*

42

43 No less than 60 days prior to the formation of a subsidiary, the  
44 GDC is required to provide notice to the governor of each state and  
45 certain members of each state's legislatures. The creation of a  
46 subsidiary corporation is subject to approval by the board.

47 Within 60 days of the effective date of the bill, and on or before  
48 the first day of January of each year annually thereafter, any

1 subsidiary corporation, in cooperation with the GDC, is required to  
2 provide to the governor and legislature of each state a report on the  
3 subsidiary corporation containing information required under the  
4 bill.

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

9  
10 *Property disposition*

11  
12 The bill provides certain requirements for the disposition of  
13 property owned by the GDC. Any sale of real property is to be  
14 undertaken and conducted pursuant to the provisions of the existing  
15 laws governing the sale of real property in the state in which the  
16 real property is located and by approval of the board.

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

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

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

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

42 The chief executive officer may authorize or arrange for  
43 contracts for the sale of personal property owned by the GDC upon  
44 terms and conditions as the chief executive officer deems proper  
45 and execute the contract on behalf of the GDC where the value of  
46 the personal property is not in excess of \$1,000,000; provided,  
47 however, that personal property valued at more than \$250,000 is not  
48 to be sold under the authority of the chief executive officer other

1 than to the highest bidder after public advertisement. Where the  
2 value of the personal property is in excess of \$1,000,000, the sale of  
3 the property is dependent on authorization by the board.

4

5 *Exemption from taxes and other laws*

6

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

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

16

17 *Consent to suit*

18

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

30 The GDC is declared immune from liability in the state of New  
31 Jersey in the same manner that the state itself is immune from  
32 liability under the "New Jersey Tort Claims Act" and "New Jersey  
33 Contractual Liability Act."

34

35 *Dissolution*

36

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

47 The bill authorizes the governors of both states to jointly  
48 determine that dissolution of the GDC on the required date is

1 impractical and to extend the dissolution for one year to the first  
2 day of the 48th month following completion of the Gateway  
3 Program in order to resolve any issues concerning transfer of  
4 component projects, resolution of outstanding debt, or to remedy  
5 any undue prejudice to Amtrak. The bill provides that the GDC is  
6 prohibited from remaining in existence beyond the first day of the  
7 48th month following completion of the Gateway Program.

8

9 *Amendment to the agreement*

10

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

14

15 *New Jersey commissioners*

16

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

29

30 *Condemnation power*

31

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



# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 3918**

# **STATE OF NEW JERSEY**

DATED: JUNE 17, 2019

The Senate Budget and Appropriations Committees reports favorably a Senate committee substitute for Senate, No. 3918.

This substitute bill establishes the Gateway Development Commission (“GDC”) for the primary purpose of constructing the transportation projects known as the Gateway Program. The Gateway Program is intended to maintain and increase passenger rail capacity, reliability, safety, and security between New Jersey and New York and consists of component projects within Phase One and Phase Two of the project. The bill specifically delineates Phase One to include: the Hudson Tunnel project; the Portal North Bridge project; and the Hudson Yards right-of-way preservation project. The bill leaves open the projects which are to be included in Phase Two, which is subject to a memorandum of understanding between the two states.

#### *Purposes*

The purposes of the GDC are to facilitate the Gateway Program, coordinate the activities of governmental entities involved in the Gateway Program, act as a coordinating agency to facilitate the Gateway Program, pursue efforts to assist federal and state agencies and other entities to further passenger rail transportation between the two states, to take any and all actions that may be necessary or appropriate to qualify for financial assistance, loans, grants, or other funding that may be available for the Gateway Program, and to facilitate the Gateway Program by accepting, collecting, and receiving funds pursuant to a memorandum of understanding entered into pursuant to the bill and by establishing, levying, and collecting tolls and fees payable by entities using the Project. The GDC’s power to establish tolls and fees is limited in such a manner that the GDC: is prohibited from establishing tolls or fees at a rate greater than is necessary to facilitate the Gateway Program; is required to adopt any tolls or fees by board action, provided that the board complies with public hearing requirements established in the bill; is prohibited from conflicting with federal law or the laws of the state of New York and the state of New Jersey; may only impose tolls or fees on the New Jersey Transit Corporation (NJ Transit) in a manner expressly and

specifically authorized pursuant to a memorandum of understanding executed pursuant to the bill. Any revenue from such a toll or fee is required to count toward the New Jersey share of funding pursuant to the memorandum of understanding.

#### *Commission membership*

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

#### *Organization of the commission*

The GDC board is to have two co-chairpersons, one from New York and one from New Jersey. Which commissioner serves as chairperson is to be determined by the laws of each respective state. If state law does not specify how to select the co-chairperson, the bill provides that the co-chairperson from a state is to be selected by that state's commissioners.

The powers of the GDC may be exercised by the commissioners at a meeting duly called and held where at least two commissioners from New York, two commissioners from New Jersey, and the Amtrak commissioner are present. Action may be taken and motions and resolutions adopted by the GDC through the affirmative vote of at least two New York commissioners, two New Jersey commissioners, and the Amtrak commissioner. The bill provides that each state's governor has a veto over any action of any commissioner appointed therefrom. Each governor has 10 business days after the meeting minutes are provided to the governor to review actions taken at a GDC meeting. During that 10-day period, each governor may approve the meeting minutes or may veto any action therein recited as having been taken by a commissioner of that governor's respective state. If the governor does not return the meeting minutes within 10 days, the minutes for actions taken by that state's commissioners are deemed approved.

#### *Transparency and accountability measures*

The GDC is required to adopt a mission statement, adopt a code of conduct, establish a whistleblower access and assistance program, and establish policies regarding contact with lobbyists, and have an

efficiency study of the GDC conducted by an independent entity at least every five years.

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

All meetings of the GDC are required to be open to the public and members of the news media, except for when the GDC meets in executive session. The bill provides for specific exceptions to the requirement that the meeting be open to the public. Meeting agendas are required to be made available to the public at least 72 hours before a meeting and public notice of the time and place of the meeting is required to be provided to media outlets and conspicuously posted in designated areas and on the GDC's website at least five days before the meeting. The public is reserved at least 30 minutes at each board meeting to speak on any topic on an agenda, or a reasonable amount of time in order to allow any persons in attendance an opportunity to comment on any topic on the agenda. The GDC is required to keep reasonably comprehensible minutes of all meetings and to make those minutes available on its website within two weeks from the date of the meeting. The bill subjects the GDC to the New York freedom of information law for requests filed in New York and to the New Jersey open public records law for requests filed in New Jersey. The GDC is authorized to appear before a committee of the legislative houses of each state upon request from that house's presiding officer. Each legislative house is entitled to request two such appearances in each calendar year. The bill authorizes each legislative house to request the attendance of any named officer of the GDC.

#### *Duties of the GDC*

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

*Powers of the GDC*

The powers of the GDC are to: (1) facilitate the Gateway Program through contracts and agreements and other documents and instruments, provided that the GDC complies with workers compensation, prevailing wage, and other labor laws in each respective state; (2) sue and be sued; (3) accept and expend funds; (4) acquire property, including by condemnation, and manage that property and develop undeveloped property necessary or appropriate to facilitate the Gateway Program; (5) make, procure, enter into, execute, and deliver contracts; (6) make applications for and accept funding, permits, authorizations, and approvals as may be necessary to facilitate the Gateway Program; (7) enter into agreements with a public or private entity or entities to facilitate the Gateway Program and for use of the Project, provided that any tolls, fees, rates, charges, or rentals imposed do not conflict with federal law, the laws of the state of New Jersey and the state of New York, or the limitation on the GDC's tolling powers provided in section 4 of the bill; (8) adopt its own public procurement rules and guidelines, in accordance with provisions in the bill; (9) dispose of property in accordance with the provisions in the bill; (10) issue or guarantee bonds, notes, or other evidence of indebtedness, enter into loan agreements and otherwise borrow funds, or incur indebtedness; (11) acquire and hold securities for investment purposes; (12) appoint officers and employees; (13) obtain insurance; (14) cooperate with governmental entities or private entities; (15) indemnify individuals and entities to the extent required to facilitate the Gateway Program; (16) establish or acquire subsidiaries as required to facilitate the Gateway Program; (17) utilize the existing labor force in the states and foster labor harmony in allowing for adoption of efficient labor work rules and practices during construction of the Gateway Program; and (18) exercise all other powers as may be necessary or appropriate.

*Exemption from taxes, local laws*

The commission is not required to pay any taxes or assessments levied by either state or local government of either state on any property used for the facilitation of the project or any income or revenue from facilitation of the project. The commission is authorized to enter into a voluntary agreement with any local government to pay, in lieu of taxes, an annual sum for any real property acquired and owned by the commission and to provide a rental payment by any person occupying any portion of the real property. However, the voluntary agreement is not to provide for payment of an amount in excess of the amount last paid as taxes upon the real property prior to the time the commission acquired the real property.

The commission is required to conform to the construction, maintenance, and health and fire protection requirements of the state or local government where the project is located in so far as

the commission finds it practicable to do so. The commission is also required to submit copies of plans and specifications for buildings and structures to the appropriate state and local government officials and is to receive their comments and suggestions. However, the commission is to make the final determination as to which of those comments and suggestions to accept.

*Financial reporting and audit and financial statements*

The bill requires the GDC to publish a comprehensive annual financial report to be submitted annually to the governors and state legislatures within 120 days of the end of the GDC's fiscal year. The annual report is required to include an introductory section, a financial section, and a corporate information section.

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

*Debt issuance, capital plan, and operating budget*

The GDC is required to issue debt in accordance with the applicable laws governing the GDC and covenants with bondholders. At least 60 days prior to an intended issuance, the GDC is required to submit a statement of intent to the governor and legislature of each state.

The GDC is required to adopt a ten-year capital plan no later than January 30, 2020 and publish an annual report on the status of the capital program. The GDC is required to make the capital plan available to the public prior to its adoption. Major capital projects are required to be monitored by external engineering consultants.

The GDC is required to prepare a detailed annual operating budget beginning with the fiscal year commencing after enactment. A preliminary annual operating budget and the subsequent final annual operating budget are each required to be made publicly available each fiscal year.

*Contracting*

The bill establishes requirements for contracts for the GDC, which include requirements for specifications, grounds for cancellation of a contract, disqualification to contract with the GDC, removal or disqualification of public contractors by petition, a statement of non-collusion to be included in bids and proposals, and requirements concerning minority-owned and women-owned businesses and New York and New Jersey business enterprises. The bill also authorizes

each state's comptroller to examine the accounts and books of the GDC.

### *Subsidiaries*

No less than 60 days prior to the formation of a subsidiary, the GDC is required to provide notice to the governor of each state and certain members of each state's legislatures. The creation of a subsidiary corporation is subject to approval by the board.

Within 60 days of the effective date of the bill, and on or before the first day of January of each year annually thereafter, any subsidiary corporation, in cooperation with the GDC, is required to provide to the governor and legislature of each state a report on the subsidiary corporation containing information required under the bill.

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

### *Property disposition*

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

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

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

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

Not less than 10 days in advance of any meeting of the board at which the board is to consider an action to authorize the sale of real property, the chief executive officer is required to provide public notice of the proposed action along with relevant material terms and

provisions of the sale by posting the information on the GDC's website.

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

#### *Consent to suit*

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

The GDC is declared immune from liability as if it were the state of New York, except to the extent such immunity is waived by the state of New York under the New York court of claims act. The bill further provides that the GDC is immune from liability in New Jersey as if it were the State of New Jersey for purposes of the "New Jersey Tort Claims Act" and "New Jersey Contractual Liability Act."

#### *State commitment*

The bill establishes an equal funding agreement between the State of New Jersey and the State of New York for Phase One of the Project. Both states and the Port Authority of New York and New Jersey are to enter into a memorandum of understanding detailing the timing and source of funding for their commitment to Phase One of the Project, and if agreed to in an amendment to the memorandum, for Phase Two of the Project or portions thereof.

For any toll or fee imposed on an instrumentality of either state, the revenue generated from that toll or fee is required to count toward that State's share for purposes of any memorandum of understanding entered into under the bill.

*State labor provisions*

The facilitation of any portion of the Project in each state is designated public work pursuant to each state's respective labor laws and is accordingly subject to the respective provisions of each state's laws applicable as such a designation.

*Dissolution*

The bill contemplates the dissolution of the GDC and requires the GDC's dissolution following a joint determination by the governor of each state that the Project has been completed and should be transferred to another agency, instrumentality, or entity. Any dissolution would require that bonds and other securities incurred for the Gateway Program have been repaid or arrangements have been made to ensure full repayment, without impairment of credit worthiness and also that Amtrak not be unduly prejudiced by the dissolution.

*Amendment to the agreement*

The bill provides that the states may amend, alter, supplement, or repeal the Gateway Commission Development Act through the enactment of law by one state concurred in through enactment of law in the other state.

*Severability and construction*

The bill provides that provisions in the bill that are held invalid are severable from the remainder of the bill and that the bill is to be liberally construed to give effect to the bill's purposes.

*New Jersey commissioners*

The bill provides that the three commissioners from New Jersey are to be appointed as follows: one directly by the Governor, one by the Governor upon recommendation of the Speaker of the General Assembly (Speaker), and one by the Governor upon the recommendation of the Senate President. The bill requires that the commissioners appointed upon recommendation of the Speaker and Senate President be appointed before the Governor's direct appointment. The bill requires that each commissioner be a resident voter of the State at the time of appointment and while serving as a commissioner. An individual is prohibited from being appointed if the individual has not been a resident voter of the State for at least the two years immediately preceding appointment.

All vacancies in the office of commissioner are to be filled in the same manner as the original appointment. All commissioners are to hold office after the expiration of their term until their respective successors are appointed and qualified. Each New Jersey commissioner may be removed from office through the adoption of



articles of impeachment by the General Assembly which are delivered to the Senate and following a trial and vote by the Senate on those articles of impeachment. The bill provides that the New Jersey co-chairperson is to be selected from the three New Jersey commissioners and determined by an affirmative vote of at least two New Jersey commissioners.

#### *Condemnation power*

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

#### *Sunset provision*

The bill provides that it is to expire and be deemed repealed 15 years from the effective date of the enactment if federal funding that is necessary for purposes of facilitating Phase One of the Project has not been granted to the GDC.

#### FISCAL IMPACT

The GDC will be an independent entity, so the primary costs imposed on the GDC by the bill will not be borne directly by the State or any local government unit. The bill does provide for the State to enter into a memorandum of understanding (mou) in which the State pays for half of the non-federal share of costs for the construction of the Portal Bridge, new hudson tunnels, repair of the existing tunnels, and the hudson yards right-of-way preservation. These projects are likely to cost approximately \$15 billion. Assuming half of that cost is covered by Amtrak and federal grants, that would leave \$7.5 billion in State costs, and \$3.75 billion for New Jersey's share. That cost could be mitigated by contributions from the Port Authority of NY and NJ which count toward each state's share on a 50:50 basis. The composition of the New Jersey share is unclear until the mou is executed. If the mou provides for tolls and changes to NJ Transit, then NJ Transit will have to pay those costs out of operating revenues, which could be realized as State costs due to NJ Transit's reliance upon State operating subsidies, or require increased passenger fares on NJ Transit riders. Otherwise, the State would likely fund its share through the State capital program which would only impact the composition of already statutorily authorized capital expenditures.

Additionally, the bill's exemption of the GDC from property taxes for itself and its contractors is likely to reduce local property tax revenue, and the expansion of eminent domain power may also reduce local tax revenue while having a neutral impact on the State, since the GDC must pay for the State's cost in exercising eminent domain powers.

# Joint Statement from New Jersey Governor Phil Murphy and New York Governor Andrew M. Cuomo on the Signing of Legislation to Move Forward the Gateway Program

07/22/2019

"The current Hudson River train tunnels are in dire condition, and it's only a matter of time before one or both tubes fail. Building the new Hudson Tunnel Project is the single most important infrastructure project in our nation, but the Trump administration has abdicated its responsibility by failing to pay their fair share to replace this federally-owned asset.

"While the Trump administration continues to put politics ahead of the safety and economic security of the nation, New York and New Jersey are working together to get the job done. The signing of this legislation will statutorily create the Gateway Development Commission as a bi-state entity to facilitate the new Hudson Tunnel Project.

"The Gateway Program isn't just about New York and New Jersey – it's about the entire national economy with 20 percent of the country's GDP reliant on the region served by the Northeast Corridor. In the absence of leadership in Washington, we remain committed to moving ahead with this profoundly urgent infrastructure project."

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# New Jersey Leaders Applaud Creation of the Gateway Development Commission

07/22/2019

TRENTON – Governor Phil Murphy and New York Governor Andrew Cuomo today jointly signed bi-state legislation to create the Gateway Development Commission, a critical step forward for the Gateway Program.

“The current Hudson River train tunnels are in dire condition, and it’s only a matter of time before one or both tubes fail. Building the new Hudson Tunnel Project is the single most important infrastructure project in our nation, but the Trump administration has abdicated its responsibility by failing to pay their fair share to replace this federally-owned asset,” **said New Jersey Governor Phil Murphy and New York Governor Andrew Cuomo.** “While the Trump administration continues to put politics ahead of the safety and economic security of the nation, New York and New Jersey are working together to get the job done. The signing of this legislation will statutorily create the Gateway Development Commission as a bi-state entity to facilitate the new Hudson Tunnel Project.

“The Gateway Program isn’t just about New York and New Jersey – it’s about the entire national economy with 20 percent of the country’s GDP reliant on the region served by the Northeast Corridor. In the absence of leadership in Washington, we remain committed to moving ahead with this profoundly urgent infrastructure project,” **Governors Murphy and Cuomo continued.** “The legislation makes the Commission eligible to receive federal grants and identifies the funding agreement between the states as a fifty-fifty split of the local share for phase one of the program. The bill also expands the board, creates additional transparency and oversight provisions, and identifies the appointment procedures for commissioners.

Legislative leaders applauded the bill signing:

“This was a coordinated effort between our states’ legislative and executive branches and I want to give particular credit to my partner, New York Assembly Authorities Committee Chair Amy Paulin, for her leadership throughout this process,” **said Senate Majority Leader Loretta Weinberg.** “The Gateway Program will be the largest infrastructure project in our nation’s history. Our legislation requires New York and New Jersey to share equally in the local share of the cost of building the new tunnels and the Portal Bridge, expands the Gateway board, and establishes strict standards of transparency and accountability.”

“This sets the framework for what is one of the most important infrastructure projects of our time and will guarantee accountability, transparency and critical labor protections throughout its construction,” **said Senator Patrick Diegnan.** “The new Gateway tunnel is vital to spurring the economy, boosting home values and improving the quality of life of hundreds of thousands of commuters. I am grateful to see this critical legislation signed into law.”

“Constructing the Gateway Tunnel is critical to serving the growing number of New Jersey commuters, as well as creating jobs and securing long-term economic growth,” **said Senate Minority Leader Tom Kean.** “The Gateway Program will increase NJ Transit rail capacity to and from New York Penn Station by 70,000 riders a day and enable NJ Transit to provide direct one-seat rides to Manhattan, including on the Raritan Valley Line. I will continue to be a vocal advocate to ensure New Jerseyans have a dependable, affordable, and safe mass-transit service.”

“While the federal government continues to stall funding for the Gateway Program, New Jersey is taking action to invest in infrastructure, keep commuters safe and build our national economy,” **said Assembly Speaker Craig Coughlin.** “We will no longer sit idly by waiting for the Trump administration to support a project that affects the lives of thousands of residents along the East coast. This commission will help to jumpstart the process of bringing our infrastructure into the 21st century, the creation of jobs and supports the residents of our community. Commuters and residents from both states deserve to see improvements in the rail line, which are long overdue.”

“The breakdown of the Federal financial commitments toward the Gateway project have stunted the progress of vital New Jersey infrastructure improvements,” **said Assemblyman Dan Benson.** “Rooted in fairness, this legislation allows us to move beyond these unfulfilled promises. By establishing equal financial responsibility and accountability, construction and repairs of the Hudson tunnels, Portal Bridge, North River rail tunnels and Northeast Corridor lines can finally reach fruition.”

"Creating an agency and forging a strong partnership, as this legislation does, will enable us to secure long-awaited funding," **said Assemblywoman Valerie Vainieri Huttle**. "Initiating these projects so we can start seeing the finish line isn't just structurally vital, but economically imperative. These lines are the most heavily used in the country, which is no small feat. With the authority to put all the moving parts into motion, I see the GDC being an effective means for action."

The Gateway Program, which includes replacement of the century-old Portal Bridge and the construction of a new tunnel under the Hudson River, is the most urgently needed infrastructure project in the nation. The project, which has bipartisan support in Congress and from the New Jersey delegation along with New York State leaders, has been delayed in the financial and environmental review process with the U.S. Department of Transportation and the Federal Transit Administration.