ASSEMBLY, No. 5067



STATE OF NEW JERSEY

218th LEGISLATURE



INTRODUCED FEBRUARY 7, 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)

Co-Sponsored by:

Assemblymen McKeon, Karabinchak, Chiaravalloti, Giblin and Houghtaling

SYNOPSIS

Establishes Gateway Development Commission.

CURRENT VERSION OF TEXT

As introduced.



An Act establishing the Gateway Development Commission, supplementing Title 32 of the Revised Statutes, and amending P.L.1966, c.301.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

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

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

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

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

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

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

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

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

“Facilitate” means the planning, designing, financing, acquisition, development, redevelopment, expansion, construction, reconstruction, replacement, approval of works, lease, leaseback, licensing, consigning, asset management, optimization, rehabilitation, repair, alteration, improvement, extension, management, ownership, use, and effectuation of the matters described in P.L. , c. (C. ) (pending before the Legislature as this bill). “Facilitation” shall have a concomitant meaning.

“Full Funding” means the sum of commitments to fund, from sources deemed by the Commission to be creditworthy, plus Commission cash-on-hand, plus any institution of a tariff or an agreement to impose user fees not subject to further approvals (if any), plus such other sources of funding deemed certain to be available as and when required, found by the Commission to be sufficient to Facilitate the Project or a discrete component thereof which is beneficial to the public.

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

“Project” means a passenger rail transportation project between Penn Station, Newark, New Jersey and Penn Station, New York, New York currently referred to as the “Gateway Program.”

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

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

a. Facilitate the Project;

b. Coordinate activities of governmental entities, Amtrak, and private entities providing assistance to the Project or otherwise regulating the Project, with a view to achieving Full Funding, and encourage and enable such parties to participate in the effectuation of the Project;

c. Act as a coordinating agency to arrange for cooperation among the federal government, the State of New Jersey, any local government thereof, the State of New York, any local government thereof, any agency, instrumentality, department, commission, or authority of any one or more of the foregoing, any bi-state agency, Amtrak, any individual or private firm, entity, or corporation, or with any one or more of them (including by contract among the parties), for and in connection with the Facilitation of the Project for any of the purposes of P.L. , c. (C. ) (pending before the Legislature as this bill), and to enter into an agreement or agreements (and from time to time to enter into agreements amending or supplementing the same) with the federal government, the State of New Jersey, any local government thereof, the State of New York, any local government thereof, any agency, instrumentality, department, commission, or authority of any one or more of the foregoing, any bi-state agency, Amtrak, any individual or private firm, entity, or corporation, or with any one or more of them, for or relating to such purposes, including but not limited to agreements with respect to financial assistance, loans, grants, or any other funding as may be available for the Project. The Commission is hereby intended to qualify for, authorized, and empowered to apply for and accept, financial assistance, loans, grants, or any other funding for such purposes under federal, state, or local laws, and to make application directly to the appropriate officials or agencies for the application for and receipt of federal, state, or local assistance, loans, grants, or any other funding in aid of any of the purposes of P.L. , c. (C. ) (pending before the Legislature as this bill);

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

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

f. Facilitate the Project by making and enforcing such rules and regulations and establishing, levying, and collecting such tolls, fees, rates, charges, and rentals in connection with the Project or any portion thereof, as it may deem necessary or appropriate, which said tolls, fees, rates, charges, and rentals shall not be established at rates intended to be greater than necessary to meet the expenses of the financing, construction, asset management, and optimization thereof, and to provide for the payment of, with interest upon, and the amortization and retirement of bonds or other securities or obligations issued or incurred for Project purposes, including establishment of prudent reserves, and provided that such tolls, fees, rates, charges, and rentals do not conflict with applicable federal law and the laws of the State of New Jersey and the State of New York.

5. (New section) a. The Commission shall act through a vote of its three commissioners: one of which will be directly appointed by the Commissioner of the New York State Department of Transportation; one of which will be directly appointed by the Board of Directors of the New Jersey Transit Corporation; and one of which will be directly appointed by Amtrak. The commissioner appointed by Amtrak will serve to represent Amtrak’s interest, as owner-operator or user of the Northeast Corridor, in the work to be undertaken by the Commission.

b. The Commission’s initial commissioners shall be the individuals serving as trustees of the Gateway Program Development Corporation, a New Jersey non-profit corporation, at the time of the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill). The Gateway Program Development Corporation trustees shall each serve an initial term as commissioners of the Commission for a period of three years beginning on the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill). Following this initial term, commissioners appointed in accordance with this section shall serve for a term of three years.

c. At the conclusion of a commissioner’s term (including an initial commissioner’s term), the commissioner may be reappointed for a successive three-year term at the pleasure of the party who originally appointed that commissioner (or in the case of the initial commissioners, the party who originally appointed that individual as a trustee of the Gateway Program Development Corporation). A commissioner shall automatically continue to serve following the expiration of the commissioner’s term until a successor is appointed in accordance with subsection a. of this section and seated.

d. In the event that a commissioner ceases to serve before the stated expiration of the commissioner’s term, the party that originally appointed the commissioner may appoint a replacement to serve out the remainder of the replaced commissioner’s term and thereafter, the vacancy shall be filled as provided for in subsection a. of this section.

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

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

6. (New section) a. The chairperson of the Commission shall be elected from the representatives of New Jersey and New York. The initial chairperson shall be the commissioner who was serving as chairperson of the board of trustees of the Gateway Program Development Corporation whose term as chairperson shall continue until the earlier to occur of: (1) the date on which that commissioner’s term as the Gateway Program Development Corporation chairperson would have expired; or (2) the date on which that commissioner is otherwise terminated as a commissioner. Thereafter, the commissioner appointed by the state which did not appoint the initial chairperson shall succeed as chairperson. The chairpersonship shall be alternated between the two states and each chairperson following the initial chairperson shall serve as chairperson for a term of one year. The commissioner appointed by Amtrak shall serve as vice-chairperson.

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

c. The powers of the Commission may be exercised by the commissioners at a meeting duly called and held where a quorum of all three commissioners are present; provided, however, that in the event a vacancy remains for 90 days, the powers of the Commission may be exercised by the commissioners at a meeting duly called and held where all remaining commissioners are present. Action may be taken and motions and resolutions adopted by the Commission at any meeting thereof by unanimous affirmative vote of the commissioners. The commissioners shall adopt bylaws providing for attendance protocols, voting procedures, and other matters related to the conduct of the business of the Commission.

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

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

f. The legislature finds and declares that the right of the public to be present at meetings of the Commission, and to witness the deliberation, policy formulation, and decision making of the Commission, is vital to the enhancement and proper functioning of the democratic process, and that secrecy in public affairs undermines the faith of the public in government and the public’s effectiveness in fulfilling its role in a democratic society; and declares it to be the public policy of the State of New Jersey and the State of New York to ensure the right of their citizens to have adequate advance notice of and the right to attend all meetings of the Commission at which any Public business is acted upon in any way, except only in those circumstances where otherwise the public interest would be clearly endangered, the relevant matters are made confidential by federal or state law, or the personal privacy of individuals would be clearly in danger of unwarranted invasion.

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

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

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

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

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

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

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

f. Within 18 months of the date it organizes and not less than annually thereafter, prepare a progress report on its activities, and submit it, together with any recommendations for state or local government legislation or agency administrative action to the Governor of the State of New Jersey, the President of the Senate of the State of New Jersey, the Speaker of the General Assembly of the State of New Jersey, the Governor of the State of New York, the temporary president of the Senate of the State of New York, and the speaker of the Assembly of the State of New York; and

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

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

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

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

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

d. Acquire (including, without limitation, by gift, purchase, exchange, or condemnation in accordance with the requirements of P.L. , c. (C. ) (pending before the Legislature as this bill)), subdivide, lease, license, take, and hold property of every description and to manage such property and develop any undeveloped property owned, leased, or controlled by it in a manner necessary or appropriate to Facilitate the Project;

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

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

g. Grant public and private entities the use of the Project or a portion thereof by way of franchise, concession, license, lease, or otherwise, provide for payments to and accept payments from such entities in exchange for value received from such use, work, or services performed or otherwise and to establish or agree with Project users on tolls, fees, rates, charges, revenue sharing, and rentals for the use thereof, provided that such tolls, fees, rates, charges, revenue sharing, and rentals do not conflict with applicable federal law and the laws of the State of New Jersey and the State of New York, and provided further that the Commission shall not have the authority to set passenger fares for Amtrak or any publicly owned and operated passenger service utilizing the Project;

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

i. Dispose of, convey, or transfer all or any portion of the Project for value as may be expeditious for the Facilitation of the Project, so long as it has determined that the transferee has or is provided with a sufficient source of financing to acquire, operate, maintain, and own the Project;

j. Issue or guarantee bonds, notes, or other evidence of indebtedness, enter into loan agreements and otherwise borrow funds, or incur indebtedness or other future payment obligations for any corporate purpose, including to effectuate Full Funding, and to assign, pledge, mortgage, secure, encumber, and use its funds, assets, property, and revenues for repayment thereof, to be payable out of the funds, assets, properties, and revenues of the Commission without recourse to taxation, provided that the Commission shall have no power to pledge the full faith and credit of the federal government, the State of New Jersey, any local government thereof, the State of New York, any local government thereof, or of Amtrak or the Port Authority of New York and New Jersey in connection with the Project, or to impose any obligation for payment of the bonds upon the federal government, the State of New Jersey, any local government thereof, the State of New York, any local government thereof, or of Amtrak or the Port Authority of New York and New Jersey, in each case except as set forth in a binding agreement, or to otherwise commit any party to incur any liability in excess of its contractual obligations in connection with the Project, and provided further that neither the commissioners nor any person executing any bonds issued or guaranteed by the Commission shall be liable personally on such bonds or be subject to any personal liability or accountability by reason of the issuance thereof;

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

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

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

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

o. Indemnify individuals and entities to the extent required to Facilitate the Project;

p. Establish or acquire subsidiaries as required to Facilitate the Project;

q. 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 Project;

r. Exercise all other powers as may be necessary or appropriate in furtherance of, and consistent with, the purposes of P.L. , c.    (C. ) (pending before the Legislature as this bill).

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

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

c. Notwithstanding the provisions of subsection a. of this section, the Commission is hereby authorized and empowered, in its discretion, to enter into a voluntary agreement or agreements with any local government whereby the Commission may undertake to pay in lieu of taxes a fair and reasonable sum, if any, annually in connection with any real property acquired and owned by the Commission for any of the purposes of P.L. , c. (C. ) (pending before the Legislature as this bill), and to provide for the payment as a rental or additional rental charge by any person occupying any portion of such real property as lessee, vendee, or otherwise of such fair and reasonable sum, provided that in no event shall any voluntary agreement entered into by the Commission provide for the payment of an amount in lieu of taxes in excess of the amount last paid as taxes upon such real property prior to the time of its acquisition by the Commission.

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

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

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

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

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

b. The provisions of P.L. , c. (C. ) (pending before the Legislature as this bill), and the powers vested in the Commission, shall be liberally construed to give effect to the purposes of P.L. , c. (C. ) (pending before the Legislature as this bill).

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

a. any bonds or other securities issued and any other debt incurred for Project purposes have been repaid or arrangements have been made to ensure such repayment in full without impairment of creditworthiness; and

b. Amtrak is not unduly prejudiced by such dissolution.

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

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

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

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

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

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

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

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

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

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

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

(2) Aeronautics permits;

(3) Right-of-way permits;

(4) Traffic signal control systems;

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

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

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

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

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

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

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

15. Sections 1 through 13 of this act shall take effect upon the enactment into law by the State of New York of legislation having an identical effect with sections 1 through 13 of this act, but if the State of New York shall have already enacted such legislation, sections 1 through 13 of this act shall take effect immediately. Section 14 of this act shall take effect immediately but shall remain inoperative until sections 1 through 13 of this act take effect.

STATEMENT

This bill, which may be known and cited as the “Gateway Development Commission Act” establishes in conjunction with the State of New York, the Gateway Development Commission (commission). The commission is a new bi-state entity that is created to, in part, facilitate the completion of passenger rail transportation projects known as the Gateway Program (project) and to coordinate cooperation among various entities. The commission is to be comprised of three commissioners, with one to be appointed by the Commissioner of the New York State Department of Transportation, one to be appointed by the Board of Directors of the New Jersey Transit Corporation, and one to be appointed by the National Railroad Passenger Corporation (Amtrak). However, individuals currently serving as trustees of the Gateway Program Development Corporation are to be the initial commissioners of the commission. The initial commissioners and those appointed thereafter are to serve three-year terms. A commissioner, including an initial commissioner may be reappointed for a successive three-year term. The commissioners from the State of New Jersey and the State of New York are indemnified by their respective state to the same extent that the state indemnifies a public officer for any claim or judgement arising out of the public officer’s official duties.

The commissioner who was serving as the chairperson of the board of trustees of the Gateway Program Development Corporation is to serve as the first chairperson of the commission and is to serve until the date on which the commissioner’s term as the Gateway Program Development Corporation chairperson would have expired or the date on which the commissioner is otherwise terminated as a commissioner, whichever occurs first. Thereafter, the commissioner appointed by the state that did not appoint the initial chairperson is to be the next chairperson of the commission. The position of chairperson then alternates between the commissioners appointed by each of the state transportation entities. The chairperson is to hold office for one year. The commissioner appointed by Amtrak is to serve as the vice-chairperson of the commission. The commission is to meet regularly and the powers of the commission are to be exercised by the commissioners at a meeting where a quorum is present, except in certain circumstances. Action may be taken and motions and resolutions adopted by unanimous affirmative vote of the commissioners. The commission is authorized to request the assistance and services of certain employees and agents to carry out its duties and to employ professional, technical, and clerical staff and consultants. The commission is to adopt bylaws, rules, and regulations concerning the right of the public to be present at meetings of the commission and to obtain records of the activities of the commission.

The duties of the commission include: (1) making appropriate applications for, and acting as a coordinating, distributing, or recipient agency for federal, state, or private funding and authorizations necessary or appropriate to facilitate the project; (2) cooperating with other agencies or authorities or departments, Amtrak, and private parties to facilitate the project; (3) adopting bylaws to govern the conduct of its affairs, and adopting rules and regulations, and making appropriate orders to carry out its powers, duties, and functions; (4) expending funds that are required to effectuate the purposes of the bill and holding and investing funds; (5) recommending federal, state, and local legislation and agency administrative action concerning the project; and (6) preparing a progress report on its activities to be submitted within 18 months of the organization of the commission and annually thereafter.

Under the bill, the commission is provided the power to undertake certain tasks including, but not limited to: (1) acquiring, subdividing, leasing, licensing, taking, and holding property, managing the property, and developing any undeveloped property in a manner necessary or appropriate to facilitate the project; (2) making, procuring, entering into, executing, and delivering contracts and agreements and other documents and instruments; (3) granting public and private entities the use of the project or a portion of the project and establishing or agreeing with project users on tolls, fees, rates, charges, revenue sharing, and rentals for the use of the project, under certain circumstances; (4) adopting public procurement rules and guidelines; (5) disposing of, conveying, or transferring all or any portion of the project for value under certain conditions; and (6) issuing or guaranteeing bonds, notes, or other evidence of indebtedness, entering into loan agreements and otherwise borrowing funds, or incurring indebtedness or other future payment obligations for any corporate purpose.

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.

The bill includes a provision whereby New Jersey and New York consent to suits, actions, or proceedings against the commission except in certain situations as described in the bill. The bill provides that the commission is immune from liability in New Jersey in the same manner that the State is immune under the provisions of the “New Jersey Tort Claims Act” and the “New Jersey Contractual Liability Act.”

The commission is to dissolve following a joint determination by the governors of New Jersey and New York that the project has been completed or should be transferred to another agency, instrumentality, or entity. The commission is not to dissolve unless any debt incurred for project purposes has been repaid or arrangements have been made to ensure full repayment without impairment of creditworthiness, and Amtrak is not unduly prejudiced by the dissolution.

The bill requires the New Jersey Commissioner of Transportation to acquire, by eminent domain, certain property interests located in the State which are necessary or appropriate for the construction, reconstruction, development, redevelopment, use, occupancy, operation, and maintenance of passenger rail transportation facilities and ancillary facilities between Newark Penn Station and the State’s Hudson River boundary line. The acquisition of property interests is to be contingent upon an agreement with the Gateway Development Commission and the Gateway Development Commission agreeing to pay the costs to acquire the property interests.