

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)

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District 21 (Morris, Somerset and Union)

Co-Sponsored by:

Senator Lagana

SYNOPSIS

Establishes Gateway Development Commission with certain powers and responsibilities.

CURRENT VERSION OF TEXT

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.