

S T A T E O F N E W Y O R K

4837--A

2011-2012 Regular Sessions

I N A S S E M B L Y

February 8, 2011

Introduced by M. of A. SIMOTAS, ENGLEBRIGHT, N. RIVERA, AUBRY -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state finance law, in relation to establishing the commission on the infrastructure of New York state

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The state finance law is amended by adding a new article 17
2 to read as follows:

3 ARTICLE XVII

4 COMMISSION ON THE INFRASTRUCTURE OF NEW YORK STATE

5 SECTION 250. DEFINITIONS.

6 251. COMMISSION ON THE INFRASTRUCTURE OF NEW YORK STATE;
7 CREATION; PROCEDURE.

8 252. POWERS AND DUTIES.

9 S 250. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL
10 HAVE THE FOLLOWING MEANINGS:

11 1. "ACQUISITION" MEANS ANY NECESSARY ACTIVITIES FOR SITING A FACILITY,
12 EQUIPMENT, STRUCTURES OR ROLLING STOCK BY PURCHASE, LEASE-PURCHASE,
13 TRADE OR DONATION.

14 2. "COMMISSION" MEANS THE COMMISSION ON THE INFRASTRUCTURE OF NEW YORK
15 STATE ESTABLISHED PURSUANT TO SECTION TWO HUNDRED FIFTY-ONE OF THIS
16 ARTICLE.

17 3. "CONSTRUCTION" MEANS:

18 (A) THE DESIGN, PLANNING AND ERECTION OF NEW INFRASTRUCTURE;

19 (B) THE EXPANSION OF EXISTING INFRASTRUCTURE;

20 (C) THE RECONSTRUCTION OF AN INFRASTRUCTURE PROJECT AT AN EXISTING
21 SITE; AND

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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(D) THE INSTALLATION OF INITIAL OR REPLACEMENT INFRASTRUCTURE EQUIPMENT.

4. "INFRASTRUCTURE" MEANS A NONMILITARY STRUCTURE OR FACILITY, AND ANY EQUIPMENT AND ANY NONSTRUCTURAL ELEMENTS ASSOCIATED WITH SUCH A STRUCTURE OR FACILITY, INCLUDING:

(A) A SURFACE TRANSPORTATION FACILITY (SUCH AS A ROAD, BRIDGE, TUNNEL, HIGHWAY, PUBLIC TRANSPORTATION FACILITY, AND FREIGHT AND PASSENGER RAIL), AS THE COMMISSION DETERMINES TO BE APPROPRIATE;

(B) A MASS TRANSIT FACILITY;

(C) AN AIRPORT OR AIRWAY FACILITY;

(D) A RESOURCE RECOVERY FACILITY;

(E) A WATER SUPPLY AND DISTRIBUTION SYSTEM;

(F) A WASTEWATER COLLECTION, CONVEYANCE, OR TREATMENT SYSTEM, AND RELATED FACILITIES;

(G) A STORMWATER TREATMENT SYSTEM TO MANAGE, REDUCE, TREAT OR REUSE MUNICIPAL STORMWATER;

(H) WATERWAYS, LOCKS, DAMS AND ASSOCIATED FACILITIES;

(I) A BREAKWATER, LEVEE OR ANY RELATED FLOOD DAMAGE REDUCTION FACILITY;

(J) A DOCK OR PORT;

(K) A SOLID WASTE DISPOSAL FACILITY;

(L) A FACILITY ESSENTIAL TO THE OPERATION OF TELECOMMUNICATIONS EQUIPMENT, AS THE COMMISSION DETERMINES TO BE APPROPRIATE; AND

(M) A FACILITY ESSENTIAL TO THE SUPPLY OF ENERGY, INCLUDING BUT NOT LIMITED TO ENERGY IN THE FORM OF ELECTRICITY, NATURAL GAS, COAL, OIL AND OTHER PETROLEUM PRODUCTS, AND STEAM, AS THE COMMISSION DETERMINES TO BE APPROPRIATE.

5. "NONSTRUCTURAL ELEMENTS" MEANS:

(A) ANY FEATURE THAT PRESERVES AND RESTORES A NATURAL PROCESS, A LANDFORM (INCLUDING A FLOODPLAIN), A NATURAL VEGETATED STREAM SIDE BUFFER, WETLAND, OR ANY OTHER TOPOGRAPHICAL FEATURE THAT CAN SLOW, FILTER, AND NATURALLY STORE STORMWATER RUNOFF AND FLOOD WATERS;

(B) ANY NATURAL DESIGN TECHNIQUE THAT PERCOLATES, FILTERS, STORES, EVAPORATES AND DETAINS WATER CLOSE TO THE SOURCE OF THE WATER; AND

(C) ANY FEATURE THAT MINIMIZES OR DISCONNECTS IMPERVIOUS SURFACES TO SLOW RUNOFF OR ALLOW PRECIPITATION TO PERCOLATE.

6. "MAINTENANCE" MEANS ANY REGULARLY SCHEDULED ACTIVITY, SUCH AS A ROUTINE REPAIR, INTENDED TO ENSURE THAT INFRASTRUCTURE CONTINUES TO OPERATE EFFICIENTLY AND AS INTENDED.

7. "REHABILITATION" MEANS AN ACTION TO EXTEND THE USEFUL LIFE OR IMPROVE THE EFFECTIVENESS OF EXISTING INFRASTRUCTURE, INCLUDING:

(A) THE CORRECTION OF A DEFICIENCY;

(B) THE MODERNIZATION OR REPLACEMENT OF EQUIPMENT;

(C) THE MODERNIZATION OF, OR REPLACEMENT OF PARTS FOR, ROLLING STOCK RELATING TO INFRASTRUCTURE;

(D) THE USE OF NONSTRUCTURAL ELEMENTS; AND

(E) THE REMOVAL OF INFRASTRUCTURE THAT IS DETERIORATED OR NO LONGER USEFUL.

S 251. COMMISSION ON THE INFRASTRUCTURE OF NEW YORK STATE; CREATION; PROCEDURE. 1. THE COMMISSION ON THE INFRASTRUCTURE OF NEW YORK STATE IS HEREBY CREATED TO HAVE AND EXERCISE THE POWERS, DUTIES AND PREROGATIVES PROVIDED BY THE PROVISIONS OF THIS ARTICLE AND ANY OTHER PROVISION OF LAW.

2. THE PURPOSE OF THE COMMISSION IS TO ENSURE THAT THE INFRASTRUCTURE OF THE STATE MEETS CURRENT AND FUTURE DEMAND AND FACILITATES ECONOMIC

1 GROWTH, IS MAINTAINED IN A MANNER THAT ENSURES PUBLIC SAFETY, AND IS
2 DEVELOPED OR MODIFIED IN A SUSTAINABLE MANNER.

3 3. THE COMMISSION SHALL CONSIST OF FIVE MEMBERS APPOINTED BY THE
4 GOVERNOR, ONE OF WHOM SHALL BE APPOINTED UPON THE RECOMMENDATION OF THE
5 TEMPORARY PRESIDENT OF THE SENATE, ONE OF WHOM SHALL BE APPOINTED UPON
6 THE RECOMMENDATION OF THE SPEAKER OF THE ASSEMBLY, AND ONE OF WHOM SHALL
7 BE APPOINTED UPON THE RECOMMENDATION OF THE COMPTROLLER. EACH MEMBER OF
8 THE COMMISSION SHALL HAVE EXPERIENCE IN ONE OR MORE OF THE FIELDS OF
9 ECONOMICS, PUBLIC ADMINISTRATION, CIVIL ENGINEERING, PUBLIC WORKS,
10 CONSTRUCTION OR A RELATED DESIGN PROFESSION, PLANNING, PUBLIC INVESTMENT
11 FINANCING, ENVIRONMENTAL ENGINEERING, OR WATER RESOURCES ENGINEERING.
12 THE TERM OF THE MEMBERS FIRST APPOINTED SHALL EXPIRE JANUARY
13 THIRTY-FIRST, TWO THOUSAND SIXTEEN, AND THEREAFTER THEIR SUCCESSORS
14 SHALL SERVE FOR TERMS OF TWO YEARS ENDING ON JANUARY THIRTY-FIRST IN
15 EACH YEAR. UPON RECOMMENDATION OF THE NOMINATING OFFICIAL, THE GOVERNOR
16 MAY REPLACE ANY MEMBER IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBDI-
17 VISION FOR THE APPOINTMENT OF MEMBERS. THE GOVERNOR SHALL DESIGNATE ONE
18 OF THE MEMBERS TO SERVE AS CHAIR. ANY DETERMINATION OF THE COMMISSION
19 SHALL BE EVIDENCED BY A CERTIFICATION THEREOF EXECUTED BY ALL THE VOTING
20 MEMBERS. EACH MEMBER OF THE COMMISSION SHALL BE ENTITLED TO DESIGNATE A
21 REPRESENTATIVE TO ATTEND MEETINGS OF THE COMMISSION IN HIS OR HER PLACE,
22 AND TO VOTE OR OTHERWISE ACT ON HIS OR HER BEHALF IN HIS OR HER ABSENCE.
23 NOTICE OF SUCH DESIGNATION SHALL BE FURNISHED IN WRITING TO THE COMMIS-
24 SION BY THE DESIGNATING MEMBER. A REPRESENTATIVE SHALL SERVE AT THE
25 PLEASURE OF THE DESIGNATING MEMBER DURING THE MEMBER'S TERM OF OFFICE. A
26 REPRESENTATIVE SHALL NOT BE AUTHORIZED TO DELEGATE ANY OF HIS OR HER
27 DUTIES OR FUNCTIONS TO ANY OTHER PERSON. THE COMMISSION SHALL MEET AT
28 THE CALL OF THE CHAIR OR UPON REQUEST OF THE MAJORITY OF THE MEMBERS. A
29 MAJORITY OF THE MEMBERS OF THE COMMISSION SHALL CONSTITUTE A QUORUM, BUT
30 A LESSER NUMBER OF MEMBERS MAY CONDUCT HEARINGS.

31 4. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW, NO OFFICER OR
32 EMPLOYEE OF THE STATE, OF ANY POLITICAL SUBDIVISION OF THE STATE, OF ANY
33 GOVERNMENTAL ENTITY OPERATING ANY PUBLIC SCHOOL OR COLLEGE, OR OF ANY
34 OTHER PUBLIC AGENCY OR INSTRUMENTALITY OR UNIT OF GOVERNMENT WHICH EXER-
35 CISES GOVERNMENTAL POWERS UNDER THE LAWS OF THE STATE, SHALL FORFEIT
36 SUCH OFFICE OR EMPLOYMENT BY REASON OF ACCEPTANCE OR APPOINTMENT AS A
37 MEMBER, REPRESENTATIVE, OFFICER, EMPLOYEE OR AGENT OF THE COMMISSION NOR
38 SHALL SERVICE AS SUCH MEMBER, REPRESENTATIVE, OFFICER, EMPLOYEE OR AGENT
39 OF THE COMMISSION BE DEEMED INCOMPATIBLE OR IN CONFLICT WITH SUCH OFFICE
40 OR EMPLOYMENT. THE MEMBERS, THEIR REPRESENTATIVES, OFFICERS AND STAFF TO
41 THE COMMISSION SHALL BE DEEMED EMPLOYEES WITHIN THE MEANING OF SECTION
42 SEVENTEEN OF THE PUBLIC OFFICERS LAW.

43 5. THE MEMBERS OF THE COMMISSION SHALL SERVE WITHOUT SALARY OR PER
44 DIEM ALLOWANCE BUT SHALL BE ENTITLED TO REIMBURSEMENT FOR ACTUAL AND
45 NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF OFFICIAL DUTIES PURSU-
46 ANT TO THIS ARTICLE OR OTHER PROVISION OF LAW; PROVIDED, HOWEVER, THAT
47 SUCH MEMBERS AND REPRESENTATIVES ARE NOT, AT THE TIME SUCH EXPENSES ARE
48 INCURRED, PUBLIC EMPLOYEES OTHERWISE ENTITLED TO SUCH REIMBURSEMENT.

49 S 252. POWERS AND DUTIES. 1. THE COMMISSION SHALL HAVE THE POWER TO:

50 (A) ESTABLISH AND MAINTAIN A PRINCIPAL OFFICE WITHIN THE STATE;

51 (B) APPOINT A SECRETARY, COUNSEL, AND SUCH OTHER EMPLOYEES AND AGENTS
52 AS IT MAY DEEM NECESSARY, FIX THEIR COMPENSATION WITHIN THE LIMITATIONS
53 PROVIDED BY LAW AND SUBJECT TO THE AVAILABILITY OF APPROPRIATIONS THERE-
54 FOR, AND PRESCRIBE THEIR DUTIES;

55 (C) HOLD SUCH HEARINGS, MEET AND ACT AT SUCH TIMES AND PLACES, TAKE
56 SUCH TESTIMONY, ADMINISTER SUCH OATHS OR AFFIRMATIONS AND RECEIVE SUCH

1 EVIDENCE AS THE COMMISSION CONSIDERS ADVISABLE TO CARRY OUT ITS RESPON-
2 SIBILITIES;

3 (D) REQUIRE THE PRODUCTION OF ANY BOOKS AND PAPERS DEEMED RELEVANT, OR
4 MATERIAL TO ANY INVESTIGATION, EXAMINATION OR REVIEW;

5 (E) REQUEST AND RECEIVE FROM ANY DEPARTMENT, DIVISION, BOARD, COMMIS-
6 SION OR OTHER AGENCY OF THE STATE, INCLUDING ANY PUBLIC AUTHORITY OR
7 PUBLIC BENEFIT CORPORATION, ONE OR MORE OF THE MEMBERS OF WHICH IS
8 APPOINTED BY THE GOVERNOR, OR FROM ANY POLITICAL SUBDIVISION OF THE
9 STATE, ANY INFORMATION AND RESOURCES NECESSARY TO CARRY OUT THE RESPON-
10 SIBILITIES AND PROVISIONS SET FORTH IN THIS SECTION;

11 (F) ENTER INTO CONTRACTS WITH ANY PERSON, FIRM, PARTNERSHIP, LIMITED
12 LIABILITY COMPANY, CORPORATION, NOT-FOR-PROFIT CORPORATION, POLITICAL
13 SUBDIVISION OF THE STATE, OR GOVERNMENTAL ENTITY;

14 (G) ACCEPT, AS AGENT OF THE STATE, ANY GIFT, GRANT, DEVISE OR BEQUEST,
15 WHETHER CONDITIONAL OR UNCONDITIONAL NOTWITHSTANDING THE PROVISIONS OF
16 SECTION ELEVEN OF THIS CHAPTER, INCLUDING FEDERAL GRANTS, FOR ANY OF THE
17 PURPOSES OF THIS ARTICLE. ANY MONIES SO RECEIVED MAY BE EXPENDED BY THE
18 COMMISSION TO EFFECTUATE ANY PURPOSE OF THIS ARTICLE, SUBJECT TO THE
19 SAME LIMITATIONS AS TO APPROVAL OF EXPENDITURES AND AUDIT AS ARE
20 PRESCRIBED FOR STATE MONIES APPROPRIATED FOR THE PURPOSES OF THIS ARTI-
21 CLE;

22 (H) ISSUE SUCH REPORTS AND OTHER DOCUMENTS AS THE COMMISSION DETER-
23 MINES TO BE NECESSARY OR ADVISABLE;

24 (I) ADVISE AND MAKE RECOMMENDATIONS TO THE GOVERNOR, THE LEGISLATURE,
25 THE COMPTROLLER, AND OTHER AGENCIES, AUTHORITIES AND POLITICAL SUBDIVI-
26 SIONS OF THE STATE ON MATTERS AFFECTING THE CONDITION OF THE STATE'S
27 INFRASTRUCTURE; AND

28 (J) PERFORM ANY OTHER FUNCTIONS THAT ARE NECESSARY OR APPROPRIATE TO
29 FULFILL THE DUTIES AND RESPONSIBILITIES OF THE OFFICE.

30 2. THE COMMISSION SHALL BE EMPOWERED TO INITIATE, INTERVENE IN OR
31 PARTICIPATE IN ANY PROCEEDINGS BEFORE THE PUBLIC SERVICE COMMISSION OR
32 OTHER AGENCY OR ENTITY, TO THE EXTENT THAT SUCH PROCEEDINGS ARE RELATED
33 TO THE PROPER PLANNING, FINANCING, CONSTRUCTION, MAINTENANCE OR REHABIL-
34 ITATION OF INFRASTRUCTURE UNDER THE REGULATORY JURISDICTION OF SUCH
35 COMMISSION, AGENCY OR ENTITY.

36 3. THE COMMISSION SHALL STUDY THE CONDITION OF THE INFRASTRUCTURE OF
37 THE STATE ON AN ONGOING BASIS, INCLUDING BUT NOT LIMITED TO A REVIEW OF
38 THE FOLLOWING MATTERS:

39 (A) THE CAPACITY OF INFRASTRUCTURE TO SUSTAIN CURRENT AND ANTICIPATED
40 ECONOMIC DEVELOPMENT AND COMPETITIVENESS, INCLUDING LONG-TERM ECONOMIC
41 GROWTH, INCLUDING THE POTENTIAL RETURN TO THE STATE ECONOMY ON INVEST-
42 MENTS IN NEW INFRASTRUCTURE AS OPPOSED TO INVESTMENTS IN EXISTING
43 INFRASTRUCTURE;

44 (B) THE AGE AND CONDITION OF PUBLIC INFRASTRUCTURE (INCLUDING
45 CONGESTION AND CHANGES IN THE CONDITION OF THAT INFRASTRUCTURE AS
46 COMPARED WITH PRECEDING YEARS);

47 (C) THE METHODS USED TO FINANCE THE CONSTRUCTION, ACQUISITION, REHA-
48 BILITATION AND MAINTENANCE OF INFRASTRUCTURE (INCLUDING GENERAL OBLI-
49 GATION BONDS, TAX-CREDIT BONDS, REVENUE BONDS, USER FEES, EXCISE TAXES,
50 DIRECT GOVERNMENTAL ASSISTANCE AND PRIVATE INVESTMENT);

51 (D) ANY TRENDS OR INNOVATIONS IN METHODS USED TO FINANCE THE
52 CONSTRUCTION, ACQUISITION, REHABILITATION AND MAINTENANCE OF INFRASTRUC-
53 TURE;

54 (E) INVESTMENT REQUIREMENTS, BY TYPE OF INFRASTRUCTURE, THAT ARE
55 NECESSARY TO MAINTAIN THE CURRENT CONDITION AND PERFORMANCE OF THE

1 INFRASTRUCTURE AND THE INVESTMENT NEEDED (ADJUSTED FOR INFLATION AND
2 EXPRESSED IN REAL DOLLARS) TO IMPROVE INFRASTRUCTURE IN THE FUTURE;

3 (F) BASED ON THE CURRENT LEVEL OF EXPENDITURE (CALCULATED AS A
4 PERCENTAGE OF TOTAL EXPENDITURE AND IN CONSTANT DOLLARS) BY FEDERAL,
5 STATE AND LOCAL GOVERNMENTS:

6 (I) THE PROJECTED AMOUNT OF NEED THE EXPENDITURES WILL MEET FIVE,
7 FIFTEEN, THIRTY AND FIFTY YEARS AFTER THE EFFECTIVE DATE OF THIS ARTI-
8 CLE; AND

9 (II) THE LEVELS OF INVESTMENT REQUIREMENTS, AS IDENTIFIED IN PARAGRAPH
10 (E) OF THIS SUBDIVISION;

11 (G) TRENDS OR INNOVATIONS IN INFRASTRUCTURE PROCUREMENT METHODS;

12 (H) TRENDS OR INNOVATIONS IN CONSTRUCTION METHODS OR MATERIALS FOR
13 INFRASTRUCTURE;

14 (I) THE IMPACT OF LOCAL DEVELOPMENT PATTERNS OF DEMAND FOR FUNDING OF
15 INFRASTRUCTURE;

16 (J) THE IMPACT OF DEFERRED MAINTENANCE; AND

17 (K) THE COLLATERAL IMPACT OF DETERIORATED INFRASTRUCTURE.

18 4. THE COMMISSION SHALL DEVELOP RECOMMENDATIONS BASED ON INITIAL
19 STUDIES UNDERTAKEN PURSUANT TO SUBDIVISION THREE OF THIS SECTION, AND
20 SHALL REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE GOVERNOR, THE
21 LEGISLATURE AND THE COMPTROLLER NOT LATER THAN EIGHTEEN MONTHS AFTER THE
22 EFFECTIVE DATE OF THIS ARTICLE. THE RECOMMENDATIONS OF THE COMMISSION
23 SHALL INCLUDE RECOMMENDED IMPROVEMENTS IN PRIORITIZING THE PLANNING AND
24 FUNDING OF INFRASTRUCTURE INVESTMENTS, IMPROVED PROCEDURES FOR ENSURING
25 THAT SCHEDULES FOR MAINTENANCE AND REHABILITATION OF INFRASTRUCTURE ARE
26 ADHERED TO, AND IMPROVEMENTS IN CRITERIA AND PROCEDURES THAT MAY BE USED
27 BY STATE AGENCIES AND AUTHORITIES AND LOCAL GOVERNMENTS IN:

28 (A) INVENTORYING EXISTING AND NEEDED INFRASTRUCTURE IMPROVEMENTS;

29 (B) ASSESSING THE CONDITION OF INFRASTRUCTURE IMPROVEMENTS;

30 (C) DEVELOPING UNIFORM CRITERIA AND PROCEDURES FOR USE IN CONDUCTING
31 THE INVENTORIES AND ASSESSMENTS; AND

32 (D) MAINTAINING DATA IN A FORM THAT IS READILY ACCESSIBLE TO THE
33 PUBLIC.

34 5. THE COMMISSION SHALL REPORT UPDATED FINDINGS AND RECOMMENDATIONS IN
35 A MANNER CONSISTENT WITH THE PROVISIONS OF SUBDIVISION FOUR OF THIS
36 SECTION. SUCH REPORTS SHALL BE ISSUED NOT LATER THAN THE LAST DAY OF THE
37 CALENDAR YEAR FOLLOWING THE YEAR IN WHICH THE REPORT REQUIRED BY SUBDI-
38 VISION FOUR OF THIS SECTION IS ISSUED AND, THEREAFTER, ON AN ANNUAL
39 BASIS.

40 6. THE COMMISSION SHALL ADVOCATE FOR THE NEED FOR EQUITABLE TREATMENT
41 OF THE INFRASTRUCTURE NEEDS OF THE STATE IN ANY APPROPRIATE FEDERAL
42 PROCEEDING AND IN ANY MATTER OTHERWISE UNDER CONSIDERATION BY THE FEDER-
43 AL GOVERNMENT. THE COMMISSION SHALL MONITOR AND PARTICIPATE IN ANY EVAL-
44 UATIONS CONDUCTED BY FEDERAL AGENCIES OF THE STATE OF THE INFRASTRUCTURE
45 OF THE UNITED STATES.

46 S 2. This act shall take effect on the sixtieth day after it shall
47 have become a law.