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

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2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. SIMOTAS, ENGLEBRIGHT, AUBRY -- read once and referred to the Committee on Governmental Operations

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:

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

ARTICLE XVII

COMMISSION ON THE INFRASTRUCTURE OF NEW YORK STATE

SECTION 250. DEFINITIONS.
251. COMMISSION ON THE INFRASTRUCTURE OF NEW YORK STATE; CREATION; PROCEDURE.
252. POWERS AND DUTIES.

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

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

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

3. "CONSTRUCTION" MEANS:

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

(B) THE EXPANSION OF EXISTING INFRASTRUCTURE;

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

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

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

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

3. THE COMMISSION SHALL CONSIST OF FIVE MEMBERS APPOINTED BY THE GOVERNOR, ONE OF WHOM SHALL BE APPOINTED UPON THE RECOMMENDATION OF THE TEMPORARY PRESIDENT OF THE SENATE, ONE OF WHOM SHALL BE APPOINTED UPON THE RECOMMENDATION OF THE SPEAKER OF THE ASSEMBLY, AND ONE OF WHOM SHALL BE APPOINTED UPON THE RECOMMENDATION OF THE COMPTROLLER. EACH MEMBER OF THE COMMISSION SHALL HAVE EXPERIENCE IN ONE OR MORE OF THE FIELDS OF ECONOMICS, PUBLIC ADMINISTRATION, CIVIL ENGINEERING, PUBLIC WORKS, CONSTRUCTION OR A RELATED DESIGN PROFESSION, PLANNING, PUBLIC INVESTMENT FINANCING, ENVIRONMENTAL ENGINEERING, OR WATER RESOURCES ENGINEERING. THE TERM OF THE MEMBERS FIRST APPOINTED SHALL EXPIRE JANUARY THIRTY-FIRST, TWO THOUSAND EIGHTEEN, AND THEREAFTER THEIR SUCCESSORS SHALL SERVE FOR TERMS OF TWO YEARS ENDING ON JANUARY THIRTY-FIRST IN EACH YEAR. UPON RECOMMENDATION OF THE NOMINATING OFFICIAL, THE GOVERNOR MAY REPLACE ANY MEMBER IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBDIVISION FOR THE APPOINTMENT OF MEMBERS. THE GOVERNOR SHALL DESIGNATE ONE OF THE MEMBERS TO SERVE AS CHAIR. ANY DETERMINATION OF THE COMMISSION SHALL BE EVIDENCED BY A CERTIFICATION THEREOF EXECUTED BY ALL THE VOTING MEMBERS. EACH MEMBER OF THE COMMISSION SHALL BE ENTITLED TO DESIGNATE A REPRESENTATIVE TO ATTEND MEETINGS OF THE COMMISSION IN HIS OR HER PLACE, AND TO VOTE OR OTHERWISE ACT ON HIS OR HER BEHALF IN HIS OR HER ABSENCE. NOTICE OF SUCH DESIGNATION SHALL BE FURNISHED IN WRITING TO THE COMMISSION BY THE DESIGNATING MEMBER. A REPRESENTATIVE SHALL SERVE AT THE PLEASURE OF THE DESIGNATING MEMBER DURING THE MEMBER'S TERM OF OFFICE. A REPRESENTATIVE SHALL NOT BE AUTHORIZED TO DELEGATE ANY OF HIS OR HER DUTIES OR FUNCTIONS TO ANY OTHER PERSON. THE COMMISSION SHALL MEET AT THE CALL OF THE CHAIR OR UPON REQUEST OF THE MAJORITY OF THE MEMBERS. A MAJORITY OF THE MEMBERS OF THE COMMISSION SHALL CONSTITUTE A QUORUM, BUT A LESSER NUMBER OF MEMBERS MAY CONDUCT HEARINGS.

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

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

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

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

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

(C) HOLD SUCH HEARINGS, MEET AND ACT AT SUCH TIMES AND PLACES, TAKE SUCH TESTIMONY, ADMINISTER SUCH OATHS OR AFFIRMATIONS AND RECEIVE SUCH EVIDENCE AS THE COMMISSION CONSIDERS ADVISABLE TO CARRY OUT ITS RESPONSIBILITIES;

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

(E) REQUEST AND RECEIVE FROM ANY DEPARTMENT, DIVISION, BOARD, COMMISSION OR OTHER AGENCY OF THE STATE, INCLUDING ANY PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION, ONE OR MORE OF THE MEMBERS OF WHICH IS APPOINTED BY THE GOVERNOR, OR FROM ANY POLITICAL SUBDIVISION OF THE STATE, ANY INFORMATION AND RESOURCES NECESSARY TO CARRY OUT THE RESPONSIBILITIES AND PROVISIONS SET FORTH IN THIS SECTION;

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

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

(H) ISSUE SUCH REPORTS AND OTHER DOCUMENTS AS THE COMMISSION DETERMINES TO BE NECESSARY OR ADVISABLE;

(I) ADVISE AND MAKE RECOMMENDATIONS TO THE GOVERNOR, THE LEGISLATURE, THE COMPTROLLER, AND OTHER AGENCIES, AUTHORITIES AND POLITICAL SUBDIVISIONS OF THE STATE ON MATTERS AFFECTING THE CONDITION OF THE STATE'S INFRASTRUCTURE; AND

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

2. THE COMMISSION SHALL BE EMPOWERED TO INITIATE, INTERVENE IN OR PARTICIPATE IN ANY PROCEEDINGS BEFORE THE PUBLIC SERVICE COMMISSION OR OTHER AGENCY OR ENTITY, TO THE EXTENT THAT SUCH PROCEEDINGS ARE RELATED TO THE PROPER PLANNING, FINANCING, CONSTRUCTION, MAINTENANCE OR REHABILITATION OF INFRASTRUCTURE UNDER THE REGULATORY JURISDICTION OF SUCH COMMISSION, AGENCY OR ENTITY.

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

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

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

(C) THE METHODS USED TO FINANCE THE CONSTRUCTION, ACQUISITION, REHABILITATION AND MAINTENANCE OF INFRASTRUCTURE (INCLUDING GENERAL OBLIGATION BONDS, TAX-CREDIT BONDS, REVENUE BONDS, USER FEES, EXCISE TAXES, DIRECT GOVERNMENTAL ASSISTANCE AND PRIVATE INVESTMENT);

(D) ANY TRENDS OR INNOVATIONS IN METHODS USED TO FINANCE THE CONSTRUCTION, ACQUISITION, REHABILITATION AND MAINTENANCE OF INFRASTRUCTURE;

(E) INVESTMENT REQUIREMENTS, BY TYPE OF INFRASTRUCTURE, THAT ARE NECESSARY TO MAINTAIN THE CURRENT CONDITION AND PERFORMANCE OF THE INFRASTRUCTURE AND THE INVESTMENT NEEDED (ADJUSTED FOR INFLATION AND EXPRESSED IN REAL DOLLARS) TO IMPROVE INFRASTRUCTURE IN THE FUTURE;

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

(I) THE PROJECTED AMOUNT OF NEED THE EXPENDITURES WILL MEET FIVE, FIFTEEN, THIRTY AND FIFTY YEARS AFTER THE EFFECTIVE DATE OF THIS ARTICLE; AND

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

(G) TRENDS OR INNOVATIONS IN INFRASTRUCTURE PROCUREMENT METHODS;

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

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

(J) THE IMPACT OF DEFERRED MAINTENANCE; AND

(K) THE COLLATERAL IMPACT OF DETERIORATED INFRASTRUCTURE.

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

(A) INVENTORYING EXISTING AND NEEDED INFRASTRUCTURE IMPROVEMENTS;

(B) ASSESSING THE CONDITION OF INFRASTRUCTURE IMPROVEMENTS;

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

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

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

6. THE COMMISSION SHALL ADVOCATE FOR THE NEED FOR EQUITABLE TREATMENT OF THE INFRASTRUCTURE NEEDS OF THE STATE IN ANY APPROPRIATE FEDERAL PROCEEDING AND IN ANY MATTER OTHERWISE UNDER CONSIDERATION BY THE FEDERAL GOVERNMENT. THE COMMISSION SHALL MONITOR AND PARTICIPATE IN ANY EVALUATIONS CONDUCTED BY FEDERAL AGENCIES OF THE STATE OF THE INFRASTRUCTURE OF THE UNITED STATES.

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