STATE OF NEW YORK

8126

2019-2020 Regular Sessions

IN ASSEMBLY

June 3, 2019

Introduced by M. of A. PAULIN -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT establishing the "Gateway Development Commission Act"; and to amend the civil service law and the transportation law, in relation to facilitating the creation of the gateway development commission

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "Gateway Development Commission Act".

§ 2. Gateway Development Commission. 1.(a) Legislative findings and intent. The legislature finds and declares: that the states of New Jersey and New York and their respective citizens share a common interest to preserve the functionality and strengthen the resiliency of long-distance and commuter rail infrastructure between New Jersey and New York, including passenger rail infrastructure owned, controlled or utilized by the National Railroad Passenger Corporation, also known as "Amtrak"; that the two states and their respective citizens share the benefits of the existing interstate passenger rail infrastructure between the two states, including the existing North River tunnel; that interstate passenger rail service and infrastructure is vital to the economies of New Jersey and New York; that, because of the passage of time and damage caused by natural disasters, both states recognize the existing interstate passenger rail infrastructure, including the existing North River tunnel, is at risk of system failures that could result in prolonged service disruptions that would severely damage the economies of the two states and many other portions of the economy of the northeast corridor; that both states recognize the urgent need to undertake projects necessary to create additional passenger rail capacity under the Hudson River, rehabilitate passenger rail infrastructure, maintain current levels of long-distance and commuter rail service between the two states and provide additional reliability, safety and

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

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security; that the citizens of both states will share the benefits of expanded capacity and rehabilitated passenger rail infrastructure between the two states; and that there has been a long history of cooperation among state and local governmental entities, Amtrak and various private organizations and individuals in the two states to ensure the preservation of a variety of passenger rail service options.

(b) The legislature therefore determines that the state of New Jersey and the state of New York shall equally divide the financial burdens that constitute the local share of the total costs of the Gateway Program, with 50 percent of the local share to be paid by each state, and further determines that there is a need to endorse and formalize that bi-state cooperative effort to help ensure that the functionality of long-distance and commuter rail infrastructure between New Jersey and New York and throughout the northeast corridor is preserved and maintained for the benefit of the economies of New Jersey and New York and for the well-being of present and future generations of citizens in both states; and that the creation of a bi-state commission that shall be a body corporate and politic established by the states of New Jersey and New York, acting in the public interest and exercising essential governmental functions, is an appropriate means to accomplish these very important goals and is not intended to impair, limit, diminish, or otherwise affect any right, power, or jurisdiction of the United States of America or any department, branch, agency, court, bureau, or other instrumentality thereof with respect to any matter, or grant or confer any right or power on such bi-state commission, or any officer or trustee thereof, to regulate commerce between the states.

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

2. Definitions. Except where different meanings are expressly specified in subsequent provisions of this section, the following terms shall have the following meanings:

(a) "Act" means the Gateway Development Commission act.

(b) "Amtrak" means the National Railroad Passenger Corporation, a corporation organized under 49 U.S.C. § 24101 et. Seq. and the laws of the District of Columbia.

(c) "Board" means the board of commissioners of the commission.

(d) "Commission" means the gateway development commission which is established pursuant to this act.

(e) "Committee" or "committees" means any standing committee established by the board tasked with, including, but not limited to, the audit responsibility, governance responsibility, and finance responsibility required to be established pursuant to this act.

(f) "Facilitate" or "facilitation" means the planning, designing, construction, reconstruction, replacement, approval of works, rehabilitation, repair, alteration, improvement, extension, and management of matters directly associated with the Gateway Program.

(g) "Full Funding" means the sum of commitments to fund, from sources deemed by the commission to be creditworthy, plus commission cash-on-hand, plus such other sources of funding deemed certain to be available as and when required, found by the commission to be sufficient to facilitate the Gateway Program.

(h) "Gateway Program" means a series of passenger rail transportation projects between Penn Station, Newark, New Jersey and Penn Station, New

York, New York that consists of the following component projects: the Hudson Tunnel project; the Portal North Bridge project; the Portal South Bridge project; the Hudson Yards right-of-way preservation project; the Sawtooth Bridge replacement project; the Moynihan Station construction and Penn Station rehabilitation project; the Secaucus Loop project; the Secaucus Junction renovation and expansion project; and the Penn Station South project.

(i) "Hudson Tunnel project" means a project to construct a new two-track Hudson River rail tunnel from New Jersey to Manhattan that will directly serve Penn Station New York and to rehabilitate the existing North River Tunnel.

(j) "Hudson Yards right-of-way preservation project" means a project to preserve the right-of-way under the Hudson Yards in Manhattan through the construction of two underground tubes to connect the new two-track Hudson River rail tunnel with existing rail infrastructure at Penn Station New York and new rail infrastructure associated with the Penn Station South project.

(k) "Meeting" means any gathering, whether corporeal or by means of communication equipment, which is attended by, or open to, the board, held with the intent, on the part of the commissioners present, to act as a unit upon the specific public business of the commission. "Meeting" does not mean a gathering (i) attended by less than a quorum of commissioners; (ii) in which the board is engaged in ordinary course supervision of commission staff; (iii) in which consideration of commission business matters are informally discussed without the intent or effect of effectuating any action of the commission; or (iv) a convention or similar gathering.

(l) "Moynihan Station construction and Penn Station rehabilitation project" means a project to convert the James A. Farley Post Office building in Manhattan to a train station and to connect the newly converted train station to New York Penn Station, in conjunction with renovations to the rail infrastructure at New York Penn Station.

(m) "News media" means persons representing major wire services, television news services, radio news services, and newspapers, whether located in the state of New York or New Jersey or any other state.

(n) "Penn Station South project" means a project to construct a new train station south of the existing New York Penn Station that connects to New York Penn Station and accommodates additional rail capacity into Manhattan from New Jersey.

(o) "Portal North Bridge project" means a project to replace the existing Portal Bridge over the Hackensack River between Secaucus and Kearny, New Jersey with a new, high-level, two-track fixed rail bridge.

(p) "Portal South Bridge project" means a project to construct a new, high-level, two-track fixed rail bridge over the Hackensack River between Secaucus and Kearny, New Jersey at a location south of the Portal North Bridge.

(q) "Public business" means matters which relate in any way, directly or indirectly, to the performance of the functions of the commission or the conduct of its business.

(r) "Sawtooth Bridge replacement project" means a project to replace the two-track rail bridges carrying the Northeast Corridor line at a location northeast of Kearny Junction where the Northeast Corridor line intersects with the Newark Turnpike and Belleville Turnpike with new four-track rail bridges and to replace the existing Sawtooth Bridge with a new four-track rail bridge.

(s) "Secaucus Loop project" means a project to construct new rail infrastructure near Secaucus Junction to connect the New Jersey Transit Corporation's Main-Bergen County Line and Pascack Valley Line and the Metro-North Commuter Railroad's Port Jervis Line with the Northeast Corridor Line.

(t) "Secaucus Junction renovation and expansion project" means a project to construct two additional tracks along the land-based portions of the Northeast Corridor line from Newark, New Jersey to Manhattan and to expand the tracks and platforms at Secaucus Junction to accommodate additional rail traffic that is anticipated as a result of other component projects of the Gateway Program.

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

(1) facilitate the Gateway Program;

(2) serve the mutual interests of the state of New Jersey, the state of New York and Amtrak by coordinating governmental entities, Amtrak and private entities providing assistance to the Gateway Program or otherwise regulating the Gateway Program, with a view to achieving full funding, and encourage and enable such parties to participate in the facilitation of the Gateway Program;

(3) act as a lead agency for the facilitation of the Gateway Program and to act as the recipient of all Gateway Program funds and as the project lead for all component projects of the Gateway Program, unless one of the other partner agencies or entities is designated as the project sponsor. The commission is hereby intended to qualify for, authorized, and empowered to apply for and accept, financial assistance, loans, grants or any other funding for such purposes under federal, state or local laws, and to make application directly to the appropriate officials or agencies for the application for and receipt of federal, state or local assistance, loans, grants or any other funding in aid of any of the purposes of this act;

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

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

(b) Officers. The officers of the commission shall be a chairperson, a vice chairperson, a chief executive officer, a general counsel, a chief financial officer, a chief ethics and compliance officer, an inspector general, a treasurer, a comptroller, and a secretary. Each officer shall be selected by the board of commissioners.

4. Board of commissioners. (a) The commission shall consist of nine commissioners, three resident voters from the state of New York, three resident voters from the state of New Jersey, and three individuals appointed directly by the Amtrak board of directors. The commissioners

appointed by Amtrak shall serve to represent Amtrak's interest, as owner-operator of the northeast corridor, in the work to be undertaken by the commission. The New York commissioners shall be chosen by the state of New York and the New Jersey commissioners shall be chosen by the state of New Jersey in the manner and for the terms fixed and determined from time to time by the legislature of each state respectively. Any commissioner appointed to the board shall have experience in one or more of the following areas: transportation, public administration, business management, finance, accounting, law, engineering, land use, urban and regional planning, management of large capital projects, labor relations, or have experience in some other area of activity central to the mission of the commission.

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

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

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

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

(f) Oath of office. The commissioners shall promulgate a commissioner's oath of office in consultation with the chief ethics and compliance officer. Each commissioner and officer shall, before entering upon the duties of his or her office, take and subscribe the constitutional oath of office. The oaths of office shall be filed in the office of the commission. No person shall be eligible for appointment or shall hold the office of commissioner or be appointed to, or hold, any office or position under the commission, who holds any official relation to any person or corporation related to the mission of the commission, or who owns stocks or bonds of any such corporation.

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

(h) Board training. Individuals appointed to the board of commissioners shall participate in training approved by the chief ethics and compliance officer in consultation with the inspector general of the commission regarding their legal, fiduciary, financial and ethical

responsibilities as commissioners of the commission within six months of appointment to the commission. The commissioners shall participate in continuing training as may be required to remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of commissions or public authorities and adhere to the highest standards of responsible governance.

(i) Recusals. (i) A commissioner shall not vote on or participate in any board or committee discussions or decisions with respect to an item if the commissioner, a member of the commissioner's immediate family, or a business in which the commissioner has an interest, has a direct or indirect financial involvement that may reasonably be expected to impair the commissioner's objectivity or independent judgment or that may reasonably create the appearance of impropriety. A commissioner shall report such a need for recusal to the general counsel when it arises. The public shall be informed of any recusals prior to any board action and the minutes shall clearly reflect that recusal. (ii) For the purposes of this subdivision: (1) "immediate family" means a spouse, parent, child, or sibling; and (2) "interest" means if the business organization is a partnership, the board member or board member's immediate family is a partner or owner of ten percent or more of the assets of the partnership, or if the business organization is a corporation, the board member or the board member's immediate family owns or controls ten percent or more of the stock of the corporation, or serves as a director or officer of the corporation.

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

(ii) (1) The commissioners appointed by the state of New York shall file annual financial disclosure statements pursuant to section 73-a of the public officers law.

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

(3) In addition to the financial disclosures required of the commissioners, financial disclosures of employees shall, at a minimum, be required of the chief executive officer, the general counsel, the comptroller, the treasurer, and the inspector general, employees who hold policy-making positions as determined by the general counsel of the commission, and employees whose base salary, either in the current or previous year, exceeds $150,000, which shall be adjusted for inflation annually in accordance with the consumer price index for all urban wage earners and clerical workers (CPI-W) as calculated by the federal government. The financial disclosures shall be updated not less than annually and shall be made available on the commission's website.

5. Organization of the commission; meetings. (a) The chairperson of the commission shall serve from among the commissioners appointed by the state of New Jersey and the commissioners appointed by the state of New York. The initial chairperson shall be one of the commissioners appointed by the state of New York and shall serve a one-year term. Following the initial one-year term, the chairperson shall be one of the commissioners appointed by the state of New Jersey. Thereafter, the chairpersonship shall alternate between commissioners from each state with each chairperson serving for a one-year term. The commissioner who shall serve as chairperson from each state shall be decided in accordance with the laws of each respective state. One of the commissioners

appointed by Amtrak shall serve as vice chairperson, at the discretion of the Amtrak board of directors.

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

(c) The powers of the commission may be exercised by the commissioners at a meeting duly noticed and held where a majority of commissioners are present. Each party to the commission may cast one collective vote on any motion, resolution, or other action of the board. The commissioners appointed by the state of New York shall cast one collective vote in a manner determined by the laws of the state of New York. The commissioners appointed by the state of New Jersey shall cast one collective vote in a manner determined by the laws of the state of New Jersey. The commissioners appointed by the board of directors of Amtrak shall cast one collective vote in a manner determined by the Amtrak board of directors. Action may be taken and motions and resolutions adopted by the commission at any meeting thereof only through the unanimous affirmative vote of each party to the commission. Each state reserves the right to provide by law for the exercise of a veto power by the governor thereof over any action of any commissioner appointed therefrom. The commissioners shall adopt bylaws providing for attendance protocols, voting procedures, and other matters related to the conduct of business by the commission.

(d) Board committees. (i) The board of commissioners shall establish a committee structure that shall include, but need not be limited to, the following responsibilities:

(1) a governance responsibility to be assigned to a committee comprised of not fewer than three commissioners who shall possess the necessary skills to undertake the governance duties and functions. Such committee shall be comprised of not fewer than one commissioner appointed by each appointing party. It shall be the responsibility of the members of this committee to: keep the board informed of current best governance practices; review corporate governance trends; update the commission's corporate governance principles; examine ethical and conflict of interest issues; perform board self-evaluations; investigate term limits, reappointments, and board responsibilities; develop by laws which include rules and procedures for the conduct of board business; and advise the commission on the skills and experiences required of potential commissioners;

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

(3) a finance responsibility to be assigned to a committee comprised of not fewer than three commissioners and who shall possess the necessary skills to undertake the finance duties and functions. Such commit-

tee shall be comprised of not fewer than one commissioner appointed by each appointing party. It shall be the responsibility of the members of this committee to oversee and approve the issuance of debt that the commission or its subsidiaries issue.

(ii) Every committee established by the board of commissioners shall promulgate a written charter to be approved by the board. Each charter promulgated in accordance with this subparagraph shall be made available to the public and posted on the commission's website.

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

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

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

(h) The commission shall:

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

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

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

(iv) establish a policy requiring all commissioners, officers, and employees with decision-making authority to maintain records regarding contact with lobbyists. As used in this subparagraph: (1) "contact" means any conversation, in person or by telephonic or other electronic means, or correspondence between any lobbyist engaged in the act of lobbying and any person within the commission who can make or influence a decision on the subject of the lobbying on the behalf of the commission, and shall include, at a minimum, all members of the board of commissioners and all officers of the commission, (2) "lobbyist" shall have the same meaning as defined in the laws, rules or regulations of either state, and (3) "lobbying" shall mean and include any attempt to influence: (A) the adoption or rejection of any rule or regulation having the force and effect of law by the commission, (B) the outcome of

any proceeding by the commission to establish, levy or collect fees, tolls, charges or fares, and (C) the authorization, approval or award of any agreements, contracts or purchase orders, including any settlement of commission claims, or any extension, amendment or modification of any existing agreement, contract or order; and

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

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

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

(2) offering advice regarding employee rights under applicable state and federal laws and advice and options available to all persons; and

(3) offering an opportunity for employees to identify concerns regarding any issue at the port authority.

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

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

(iii) As used in this paragraph:

(1) "Employees" means those persons employed at the commission, including but not limited to: full-time and part-time employees, those employees on probation, and temporary employees.

(2) "Whistleblower" means any employee of the commission who discloses information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or board member of the commission, including, but not limited to, such acts concerning the commission's investments, travel, acquisition of real or personal property, the disposition of real or personal property, or the procurement of goods and services.

(j) Inspector general. (i) The inspector general shall be responsible for receiving and investigating, where appropriate, all complaints regarding fraud, waste, and abuse by commissioners, officers, and employees of the port authority or third-parties doing business with the commission. The inspector general shall also be responsible for conducting investigations upon the inspector general's own initiative, as the inspector general shall deem appropriate.

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

(iii) The inspector general shall determine with respect to allegations received by the inspector general whether disciplinary action or civil prosecution by the commission is appropriate, and whether the

matter should be referred to an appropriate governmental agency for further action.

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

(v) The inspector general shall have the power to:

(1) administer oaths or affirmations and examine witnesses under oath;

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

(3) notwithstanding any law to the contrary, examine and copy or remove documents or records of any kind prepared, maintained, or held by the commission and its subsidiaries;

(4) interview any officer or employee of the commission or its subsidiaries on any matter related to the performance of such officer or employee's official duties. To the extent that the terms and conditions of employment of any employee are established by collective negotiations, any interview conducted pursuant to this paragraph must be in accordance with any applicable provisions of the current, or most recent, if expired, collective negotiations agreement covering the terms and conditions of employment of the employee;

(5) monitor the implementation by the commission of any recommendations made by the inspector general; and

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

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

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

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

(3) collective bargaining agreement, or the terms and conditions which are proposed for inclusion in any collective bargaining agreement, including the negotiation of the terms and conditions thereof with employees or representatives of employees of the commission;

(4) matter involving the purchase, lease, or acquisition of real property with commission funds, the proposed acquisition of securities, the sale or exchange of securities held by the commission, or the investment of commission funds, if public discussion of the matter would adversely affect the public interest;

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

(6) pending or anticipated litigation or contract negotiation in which the commission is, or may become, a party, or matters falling within the attorney-client privilege, to the extent that confidentiality is

required for the attorney to exercise the attorney's ethical duties as a lawyer;

(7) contract negotiations disclosure of which would imperil the commission's position or an outcome in the best interest of the commission, its mission, and the public;

(8) matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of, promotion or disciplining of any specific prospective officer or employee or current officer or employee employed or appointed by the commission, unless all the individual employees or appointees whose rights could be adversely affected request in writing that the matter or matters be discussed at a public meeting; or

(9) deliberation of the commission occurring after a public hearing that may result in the imposition of a specific civil penalty upon the responding party or the suspension or loss of a license or permit belonging to the responding party as a result of an act or omission for which the responding party bears responsibility.

(ii) The commission shall make meeting agendas available to the public at least seventy-two hours before each meeting of the board and each meeting of each committee. In addition, the commission shall send via electronic mail the agenda and public documents pertaining to a board or committee meeting to the public information office of each state's legislature at least seventy-two hours before the meeting. Public notice of the time and place of a meeting shall be provided to appropriate media outlets, shall be conspicuously posted in one or more designated areas, and shall be conspicuously posted via the commission's official website at least five business days before the meeting.

(iii) The commission shall make available to the public documents in the following manner: the agenda and public documents pertaining to a board or committee meeting shall be available for public inspection at least seventy-two hours before each meeting or as soon as practicable at an office of the commission; and the agenda and public documents pertaining to a board or committee meeting shall be posted on the commission's website.

(iv) At each public meeting of the board and at each public meeting of each committee, the public shall be allotted at least thirty minutes to speak on any topic on the agenda. The board or committee shall expand the comment time when necessary to provide a reasonable opportunity for the public to comment. The public speaking period shall take place prior to any board or committee action.

(v) The commission shall keep reasonably comprehensible minutes of all its meetings showing the time and place, the members present, the subjects considered, the actions taken, and the vote of each member. The minutes shall be available to the public within two weeks from the date of the meeting to the extent that public disclosure shall not be inconsistent with paragraph (a) of this subdivision. The minutes shall indicate for each item on the agenda the vote or recusal of each board member in attendance at an open meeting, or an executive session of the board or a committee of the board. Each item on the agenda shall be voted on separately.

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

(m) Meeting notice. (i) The board shall, within six months of the effective date of this act, adopt appropriate rules and regulations concerning proper notice to the public and the news media of its meetings and the right of the public and the news media to be present at meetings of the authority. The board may incorporate in its rules and regulations conditions under which it may exclude the public from a meeting or a portion thereof in accordance with paragraph (k) of this subdivision.

(ii) Any rules or regulations adopted hereunder shall become a part of the minutes of the gateway development commission and shall be subject to the approval of the governor of New Jersey and the governor of New York.

(n) Freedom of information. Notwithstanding any law to the contrary, the commission shall be deemed an "agency" and treated as such under the laws of New York, for all purposes under articles 6 and 6-A of the public officers law, and shall be deemed a "public agency" and treated as such under New Jersey, P.L.1963, c.73 (C.47:1A-1 et seq.), pertaining to the disclosure of government records.

(o) Legislative hearings. (i) The commission, at the request of the assembly or senate of the New York state legislature or the general assembly or senate of the New Jersey state legislature, shall be required to appear before a committee of the requesting state legislative house, upon request by the presiding officer of that state legislative house, to present testimony on any topic or subject requested by the committee or to respond to questions by members of the committee. The assembly of the New York state legislature, the senate of the New York state legislature, the general assembly of the New Jersey state legislature, and the senate of the New Jersey state legislature shall each be entitled to two such requests per calendar year.

(ii) Unless otherwise agreed to by the presiding officer of the state legislative house requesting the appearance of the commission, the commission shall, at a minimum, be represented by the chair or vice-chair of the board, chief executive officer, the chief financial officer, and any staff deemed necessary by the chair or vice-chair of the board, chief executive officer, or the chief financial officer to present testimony or respond to questions at any appearance required pursuant to this section. The presiding officer may request the appearance of any officer or employee of the commission. For purposes of this section, as applicable to New York state "presiding officer" shall mean the speaker of the assembly of the New York state legislature or temporary president of the senate of the New York state legislature. For purposes of this section, as applicable to the state of New Jersey "presiding officer" shall mean the president of the senate or the speaker of the general assembly of the state of New Jersey.

6. Duties of the commission. The duties of the commission shall be to use its efforts to accomplish, at such times as it is appropriate to do so, the following actions, provided that the commission shall not be in dereliction of its duties so long as it acts in good faith to accomplish such actions:

(a) make appropriate application for, and act as a coordinating, distributing, or recipient agency for, federal, state, or private funding and authorizations necessary or appropriate to facilitate the Gateway Program;

(b) serve as the lead agency responsible for cooperating with federal, state, local and bi-state agencies, authorities or departments, Amtrak and private parties to facilitate the Gateway Program, including enter-

ing into agreements specifying a party's rights and obligations with respect to the Gateway Program, to create a Gateway Program capable of achieving long-term stability and full funding, without obligating the full faith and credit of the federal government, either state, or any local government thereof or any other party, except as explicitly authorized by any party empowered by law to do so;

(c) adopt bylaws to govern the conduct of its affairs, adopt rules and regulations, and make appropriate orders to carry out and discharge its powers, duties and functions;

(d) expend such funds, made available to the commission as are required to effectuate the purposes set forth in this subdivision and, until expenditure is required, to hold and prudently invest funds;

(e) recommend appropriate federal, state and local government legislation and agency administrative action pertaining to the Gateway Program;

(f) Within eighteen months of the date it organizes and not less than annually thereafter, prepare a report with details on the progress on its activities and information on the financial and construction plan for the following two fiscal years, and submit it, together with any recommendations for state or local government legislation or agency administrative action to the governor of the state of New Jersey, the president of the senate of the state of New Jersey, the speaker of the general assembly of the state of New Jersey, the governor of the state of New York, the temporary president of the senate of the state of New York, and the speaker of the assembly of the state of New York. When appropriate, the recommendations provided by the commission shall include recommendations for additional powers to be granted to the commission that may be necessary for the commission to facilitate the Gateway Program. The financial and construction plan presented by the commission shall be considered approved unless disapproved by either or both legislatures within ninety days of receipt of the report; and

(g) take such other action as may be necessary or appropriate to further the purposes of this act.

7. Powers of the commission. The commission shall have the power to undertake the following:

(a) facilitate the Gateway Program, including, but not limited to, through contracts and agreements and other documents and instruments which the commission is otherwise authorized to make, enter into, execute and deliver; provided, however, that the facilitation of the project within New York state shall be subject to article 8 of the New York state labor law, as well as be subject to sections 200, 240, 241 and 242 of the New York state labor law and enforcement of prevailing wage requirements pursuant to applicable law; provided, however, that for the purposes of article 15-A of the New York state executive law only, the commission shall be deemed a state agency as that term is used in such article and its contracts and agreements and other documents and instruments which the commission is otherwise authorized to make, enter into, execute and deliver for the Gateway Program shall be deemed state contracts within the meaning set forth in such article; provided, however, the commission shall not have the authority to operate or directly engage in transportation services such that the commission would be subject to the jurisdiction of the federal surface transportation board;

(b) sue and be sued in its own name in federal and state courts in Mercer county, New Jersey and New York county, New York, it being understood that the commissioners shall have no obligation or liability for the acts or omissions of the commission;

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

(d) acquire, including, without limitation, by gift, purchase, or exchange or by condemnation in accordance as may be provided by this act, state in which the condemnation shall take place, subdivide, lease, license, take and hold property of every description and solely in furtherance of the purposes of the commission, to manage such property and develop any undeveloped property owned, leased or controlled by it in a manner necessary or appropriate to facilitate the Gateway Program;

(e) make, procure, enter into, execute, and deliver contracts and agreements and other documents and instruments as may be necessary or appropriate to carry out any power or duty of the commission under this act and to otherwise accomplish any lawful purpose which the commissioners determine will facilitate the Gateway Program, including, without limitation, with the federal government, the state of New Jersey, any local government thereof, the state of New York, any local government thereof, any agency, instrumentality, department, commission, or authority of any one or more of the foregoing, any bi-state agency, Amtrak, any individual or private firm, entity, or corporation, or with any one or more of them;

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

(g) enter into agreements with a private entity or entities to facilitate the Gateway Program;

(h) adopt its own public procurement rules and guidelines that the commission deems necessary or appropriate to facilitate the Gateway Program through any combination of means and methods otherwise available to the commission under this act, regardless of whether such combination is generally available to the states of New Jersey and New York, any local government thereof, any agency, instrumentality, department, commission or authority of any one or more of the foregoing, or any bi-state agency, and engage and contract with third parties in accordance with such procurement rules and guidelines;

(i) coordinate with entities from each state or both states to issue and guarantee bonds, notes or other evidence of indebtedness, enter into loan agreements and otherwise borrow funds, or incur indebtedness or other future payment obligations for any corporate purpose, including to effectuate full funding, and to assign, pledge, mortgage, secure, encumber and use its funds, assets, property and revenues for repayment thereof, to be payable out of the funds, assets, properties and revenues of the commission without recourse to taxation, provided that the borrowing activity has previously been included as part of the report required

pursuant to this act and was not disapproved by either or both legislatures or otherwise precluded by conditions placed upon funds provided by another agency or entity, and further provided that the commission shall have no power to pledge the full faith and credit of the federal government, the state of New Jersey, the state of New York, or any local government thereof, or of Amtrak or the Port Authority of New York and New Jersey in connection with the Gateway Program, or to impose any obligation for payment of the bonds upon the federal government, the state of New Jersey, the state of New York, or any local government thereof, or of Amtrak or the Port Authority of New York and New Jersey, in each case except as set forth in a binding agreement, or to otherwise commit any party to incur any liability in excess of its contractual obligations in connection with the Gateway Program, and provided further that neither the commissioners nor any person executing any bonds issued or guaranteed by the Commission shall be liable personally on such bonds or be subject to any personal liability or accountability by reason of the issuance thereof;

(j) acquire and hold securities for investment purposes or in connection with the facilitation of the Gateway Program;

(k) appoint such officers and employees as the commission may require for the performance of its duties and fix and determine their qualifications, duties, and compensation, subject to the provisions of the civil service law, the rules of the civil service commission of the city, the New York state collective bargaining law and applicable collective bargaining agreements with regard to those officers, and employees who are residents of and work in New York state including engineers, attorneys, consultants, financial advisors and such other persons or entities as the business of the commission may require. The commission shall participate in the New York city employees' retirement system;

(l) obtain insurance as the commission may deem advisable and to create a captive insurer to self-insure risk as deemed appropriate by the commission;

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

(n) indemnify individuals and entities to the extent required to facilitate the Gateway Program;

(o) establish or acquire subsidiaries as required to facilitate the Gateway Program;

(p) utilize the existing labor force in the states and foster labor harmony in allowing for adoption of efficient labor work rules and practices during construction of the Gateway Program; and

(q) exercise all other powers as may be necessary or appropriate in furtherance of, and consistent with, the purposes of this act provided that this subdivision shall not be construed to delegate any sovereign

power of either state unless that power has been expressly delegated to the commission pursuant to this act.

8. Commission annual financial reporting. (a) The commission shall publish a comprehensive annual financial report, submitted annually to the governors and state legislatures of New York and New Jersey and made available on the commission's website within 120 days after the end of its fiscal year. The annual report shall include the commission's financial statements, statistical and other regional data, and a narrative of the commission's activities during the year of the report. The annual report shall include:

(i) an introductory section including:

(1) a letter of transmittal to the governors of New York and New Jersey;

(2) information regarding the board of commissioners, commission officers and executive management;

(3) a letter to the board of commissioners from the chief executive officer of the commission highlighting important developments;

(4) a description of major commission activities undertaken during the prior year; and

(5) a letter to the board of commissioners from the chief financial officer of the commission with respect to the consolidated financial statements of the commission.

(ii) a financial section including:

(1) an independent auditor's report;

(2) management's discussion and analysis;

(3) financial statements;

(4) its financial reports certified by the chair and vice-chair of the board, chief executive officer, and chief financial officer of the commission, including (A) audited financials in accordance with generally accepted accounting principles, known as GAAP, and the accounting standards issued by the governmental accounting standards board, known as GASB, (B) grant and subsidy programs, (C) current ratings, if any, of its bonds issued by recognized bond rating agencies and notice of changes in such ratings, and (D) long-term liabilities, including leases and employee benefit plans;

(5) a schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year as part of a schedule of debt issuance that includes the date of issuance, term, amount, interest rate, and means of repayment including all refinancings, calls, refundings, defeasements, and interest rate exchange or other such agreements; and

(6) at a minimum a four-year financial plan, including (A) a current and projected capital budget, and (B) an operating budget report, including an actual versus estimated budget, with an analysis and measurement of financial and operating performance.

(iii) a statistical section presenting additional information as context for further understanding of the information in the financial statements, note disclosures and schedules, including (1) financial trends; (2) debt capacity; (3) operating and service data; (4) information on commission operating results; (5) information on commission capital program components; (6) information on commission facility traffic; and (7) selected statistical, demographic and economic data on the New York-New Jersey metropolitan region.

(iv) a corporate information section providing:

(1) a list of all real property of the commission;

(2) a list and full description of real property and personal property that has a sale price of over $10,000 disposed of during the period, including the price received by the commission and the name of the purchaser for all property sold by the commission during the period;

(3) a compensation schedule that shall include, by position, title and name of the person holding such position or title, the salary, compensation, allowance and/or benefits provided to any officer, director, or employee in a decision making or managerial position of such commission whose base salary is in excess of $150,000;

(4) biographical information, not including confidential personal information, for all directors and officers and employees for whom salary reporting is required;

(5) a description of the commission and its board structure, including (A) names of committees and committee members, (B) lists of board meetings and attendance, (C) descriptions of major authority units and subsidiaries, and (D) number of employees;

(6) its mission statement, charter, if any, and by laws; and

(7) a description of any material pending litigation in which the commission is involved as a party during the reporting year.

9. Commission audits and financial statements. (a) The commission shall prepare financial statements on an annual basis, in accordance with generally accepted accounting principles, known as GAAP, and the accounting standards issued by the governmental accounting standards board, known as GASB.

(b) The audit committee of the board of commissioners of the commission shall arrange for an independent firm of certified public accountants to perform an audit of the financial statements of the commission each year, in accordance with generally accepted accounting principles and standards referenced in paragraph (a) of this subdivision. Each independent firm of certified public accountants that performs any audit required by this section shall timely report to the board of the commission:

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

(ii) other material written communications, that is not privileged or confidential, between the independent firm of certified public accountants and the management of the commission, including the management letter along with management's response or plan of corrective action, material corrections identified, or schedule of unadjusted differences.

(c) Every financial statement prepared pursuant to this subdivision shall be approved by the board of commissioners. As a condition to the issuance of the annual financial statements of the commission, the chief executive officer and the chief financial officer of the commission shall be required to make a written certification to that effect that, to the best of their knowledge and belief, the financial and other information in the consolidated financial statements is accurate in all material respects and has been reported in a manner designed to present fairly the commission's net assets, changes in net assets, and cash flows, in accordance with generally accepted accounting principles and standards referenced in paragraph (a) of this subdivision; and, that on the basis that the cost of internal controls should not outweigh their benefits, the commission has established a comprehensive framework of internal controls to protect its assets from loss, theft, or misuse, and to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the consolidated financial statements in accordance with generally accepted accounting principles and standards referenced in paragraph (a) of this subdivision.

(d) Notwithstanding any other provision of law to the contrary, the commission shall not contract with an independent firm of certified public accountants for audit services to the authority if the lead or coordinating audit partner having primary responsibility for the audit, or the audit partner responsible for reviewing the audit, has performed audit services for the two previous fiscal years of such commission.

(e) The commission shall not contract with the independent firm of certified public accountants performing the commission's audit for any non-audit services to such commission contemporaneously with the audit, unless receiving previous written approval by the audit committee including:

(i) bookkeeping or other services related to the accounting records or financial statements of such commission;

(ii) financial information systems design and implementation;

(iii) appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

(iv) actuarial services;

(v) internal audit outsourcing services;

(vi) management functions or human services;

(vii) broker or dealer, investment advisor, or investment banking services; and

(viii) legal services and expert services unrelated to the audit.

(f) The commission shall not contract with an independent firm of certified public accountants for any audit service if the chief executive officer, comptroller, chief financial officer, treasurer, or any other person serving in an equivalent position for the commission, was employed by that independent firm of certified public accountants and participated in any capacity in the audit of the authority during the one year period preceding the date of the initiation of the audit.

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

10. Contracts of the commission. (a) Definitions. As used in this subdivision, the following terms shall have the following meanings unless otherwise specified:

(i) "Construction item" means any such item or material used in construction and which is procured directly by the commission or office or any such item or material commonly used in construction which is procured by a person, other than a municipality, under contract with the commission or office.

(ii) "Office" means the New York office of general services.

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

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

(v) "Secondary materials" means any material recovered from or otherwise destined for the waste stream, including but not limited to, post-consumer material, industrial scrap material, and overstock or obsolete inventories from distributors, wholesalers and other companies as defined in rules and regulations promulgated by the New York commissioner of general services but such term does not include those materials

and byproducts generated from, and commonly reused within an original manufacturing process.

(vi) "Specification" means any description of the physical or functional characteristics, or of the nature of a material, supply, equipment or construction item. It may include a description of any requirement for inspecting, testing or preparing a material, supply, equipment or construction item for delivery.

(b) Specifications. The commission shall create and update product specifications to ensure that:

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

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

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

(iv) Specifications incorporate or require the use of secondary materials to the maximum extent practicable without jeopardizing the performance or intended end use of the product; provided however, where the commission demonstrates that for a particular end use a product containing secondary materials would not meet necessary performance standards, such specifications need not incorporate or require the use of secondary materials.

(c) Ground for cancellation of contract by the commission. A clause shall be inserted in all specifications or contracts hereafter made or awarded by the commission, for work or services performed or to be performed or goods sold or to be sold, to provide that upon the refusal by a person, when called before a grand jury, head of a state department, temporary state commission or other agency of the state of New York or the state of New Jersey, the organized crime task force in the department of law of the state of New York, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the applicable state, any political subdivision thereof, a public authority or with any public department, agency or official of the state of New York or the state of New Jersey or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract, such person, and any firm, partnership or corporation of which he or she is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with the commission or official thereof, for goods, work or services, for a period of five years after such refusal.

(d) Disqualification to contract with public authority. Any person who, when called before a grand jury, head of a state department, temporary state commission or other state agency of the state of New York or the state of New Jersey, the organized crime task force in the department of law of the state of New York, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the applicable state,

any political subdivision thereof, a public authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant questions concerning such transaction or contract, and any firm, partnership or corporation, of which he or she is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with the commission or any official of the commission, for goods, work or services, for a period of five years after such refusal or until a disqualification shall be removed pursuant to the provisions of paragraph (e) of this subdivision.

It shall be the duty of the officer conducting the investigation before the grand jury, the head of a state department, the chairman of the temporary state commission or other state agency of the state of New York or the state of New Jersey, the organized crime task force in the department of law of the state of New York, the head of a city department or other city agency before which the refusal occurs to send notice of such refusal, together with the names of any firm, partnership or corporation of which the person so refusing is known to be a member, partner, officer or director, to the commissioner of transportation of the state of New York or the state of New Jersey, or the commissioner of general services as the case may be, and the appropriate departments, agencies and officials of the applicable state, political subdivisions thereof or public authorities with whom the persons so refusing and any firm, partnership or corporation of which he or she is a member, partner, director or officer, is known to have a contract. However, when such refusal occurs before a body other than a grand jury, notice of refusal shall not be sent for a period of ten days after such refusal occurs. Prior to the expiration of this ten day period, any person, firm, partnership or corporation which has become liable to the cancellation or termination of a contract or disqualification to contract on account of such refusal may commence a special proceeding at a special term of the supreme court of New York or superior court of New Jersey, held within the judicial district in which the refusal occurred, for an order determining whether the questions in response to which the refusal occurred were relevant and material to the inquiry. Upon the commencement of such proceeding, the sending of such notice of refusal to answer shall be subject to order of the court in which the proceeding was brought in a manner and on such terms as the court may deem just. If a proceeding is not brought within ten days, notice of refusal shall thereupon be sent as provided herein.

(e) Removal of disqualification of public contractors by petition. (i) Any firm, partnership or corporation which has become subject to the cancellation or termination of a contract or disqualification to contract on account of the refusal of a member, partner, director or officer thereof to waive immunity when called to testify, as provided in paragraph (d) of this subdivision, may, upon ten days' notice to the attorney general of the state in which the refusal occurred and to the officer who conducted the investigation before the grand jury or other body in which the refusal occurred, commence a special proceeding at a special term of the supreme court of New York or superior court of New Jersey held within the judicial district in which the refusal occurred for a judgment discontinuing the disqualification. Such application shall be in the form of a petition setting forth grounds, including that the cooperation by petitioner with the grand jury or other body at the

time of the refusal was such, and the amount and degree of control and financial interest, if any, in the petitioning firm, partnership or corporation by the member, partner, officer or director who refused to waive immunity is such that it will not be in the public interest to cancel or terminate petitioner's contracts or to continue the disqualification, as provided in paragraph (d) of this subdivision.

A copy of the petition and accompanying papers shall be served with the notices to be given pursuant to this subdivision.

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

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

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

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

(f) Statement of non-collusion in bids or proposals to the commission. (i) Every bid or proposal hereafter made to the commission or to any official of the commission, where competitive bidding is required by statute, rule, regulation or local law, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury:

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

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

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

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

(2) A bid shall not be considered for award nor shall any award be made where the provisions of clause one of this subparagraph have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where the provisions of clause one of this subpar-

agraph have not been complied with, the bid shall not be considered for award nor shall any award be made unless the commission or official thereof determines that such disclosure was not made for the purpose of restricting competition. The fact that a bidder (A) has published price lists, rates, or tariffs covering items being procured, (B) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (C) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure.

(ii) Any bid hereafter made to the commission by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, regulation, or local law, and where such bid contains the certification referred to in subparagraph (i) of this paragraph, shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

(g) Procurement contracts. (i) Definitions. For the purposes of this subdivision:

(1) "Allowable indirect costs" means those costs incurred by a professional firm that are generally associated with overhead which cannot be specifically identified with a single project or contract and are considered reasonable and allowable under specific state contract or allowability limits.

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

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

(4) "Professional firm" means any individual or sole proprietorship, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture, engineering, or surveying.

(5) "Women-owned business enterprise" means a business enterprise, including a sole proprietorship, partnership or corporation: with more than fifty percent of the ownership interest owned by one or more United States citizens or permanent resident aliens who are women or, in the case of a publicly-owned business, where more than fifty percent of the common stock or other voting interests is owned by United States citizens or permanent resident aliens who are women; in which the ownership

interest of women is real, substantial, and continuing; in which the women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and authorized to do business in the state of New York or the state of New Jersey, independently owned and operated, and not dominant in its field.

(ii) The commission shall adopt by resolution comprehensive guidelines which detail the commission's operative policy and instructions regarding the use, awarding, monitoring and reporting of procurement contracts. Such guidelines shall be annually reviewed and approved by the commission.

(iii) For purposes of this subdivision, procurement contracts shall mean any written agreement for the acquisition of goods or services of any kind, in the actual or estimated amount of five thousand dollars or more.

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

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

(2) Requirements regarding the selection of contractors, which shall include provisions:

(A) for the selection of such contractors on a competitive basis, and provisions relating to the circumstances under which the board may by resolution waive competition, including, notwithstanding any other provision of law requiring competition, the purchase of goods or services from small business concerns or those certified as minority or women-owned business enterprises, or goods or technology that are recycled or remanufactured, in an amount not to exceed $200,000 without a formal competitive process;

(B) describing when the award of procurement contracts shall require approval of the board by resolution, provided that any contract involving services to be rendered over a period in excess of one year shall require the approval of the board by resolution and an annual review of the contract by the board;

(C) setting forth responsibilities of contractors;

(D) the commission shall not refuse to negotiate with a professional firm solely because the ratio of the "allowable indirect costs" to direct labor costs of the professional firm or the hourly labor rate in any labor category of the professional firm exceeds a limitation generally set by the commission in the determination of the reasonableness of the estimated cost of services to be rendered by the professional firm, but rather the commission should also consider the reasonableness of cost based on the total estimated cost of the service of the professional firm which should include, among other things, all the direct labor costs of the professional firm for such services plus all allowable indirect costs, other direct costs, and negotiated profit of the professional firm.

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

(4) Requirements for the designation of one or more senior staff of the commission to oversee the commission's programs established to promote and assist: (A) participation by certified minority or women-owned business enterprises in the commission's procurement opportunities

and facilitation of the award of procurement contracts to such enterprises; (B) the utilization of certified minority and women-owned business enterprises as subcontractors and suppliers by entities having procurement contracts with the commission; and (C) the utilization of partnerships, joint ventures or other similar arrangements between certified minority and women-owned business enterprises and other entities having procurement contracts with the commission. Such staff shall be familiar with the procurement of the types of construction, financial, legal or professional services utilized by the commission, report directly to the commission's executive director, and either directly or through their designees participate in the procurement process.

(5) Requirements for providing notice, in addition to any other notice of procurement opportunities required by law, to professional and other organizations that serve minority and women-owned business enterprises providing the types of services procured by the commission.

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

(7) The establishment of appropriate goals for participation by minority or women-owned business enterprises in procurement contracts awarded by the commission and for the utilization of minority and women-owned enterprises as subcontractors and suppliers by entities having procurement contracts with the commission. Numerical goals for participation targets shall be established by the commission.

(8) Requirements to conduct procurements in a manner that will enable the commission to achieve the maximum feasible portion of the goals established pursuant to this subparagraph and that eliminates barriers to participation by minority and women-owned business enterprises in the commission's procurements. Such procurement requirements shall include the following:

(A) Measures and procedures to ensure that certified businesses shall be given the opportunity for maximum feasible participation in the performance of state contracts and to assist in the commission's identification of those state contracts for which certified businesses may best bid to actively and affirmatively promote and assist their participation in the performance of state contracts so as to facilitate the commission's achievement of the maximum feasible portion of the goals for state contracts to such businesses;

(B) Provisions designating the New York division of minority and women-owned business development to certify and decertify minority and women-owned business enterprises through a single process that meets applicable state and federal requirements;

(C) A requirement that each contract solicitation document accompanying each solicitation set forth the expected degree of minority and women-owned business enterprise participation based, in part, on:

(I) the potential subcontract opportunities available in the prime procurement contract; and

(II) the availability of certified minority and women-owned business enterprises to respond competitively to the potential subcontract opportunities;

(D) A requirement that the commission provide a current list of certified minority business enterprises to each prospective contractor;

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

(F) Provisions under which the commission may waive obligations of the contractor relating to minority and women-owned business enterprise participation after a showing of good faith efforts to comply with the requirements of this subdivision;

(G) A requirement that the commission verify that minority and women-owned business enterprises listed in a successful bid are actually participating to the extent listed in the project for which the bid was submitted;

(H) In the implementation of this section, the commission shall:

(I) consider, where practicable, the severability of construction projects and other bundled contracts;

(II) implement a program that will enable the commission to evaluate each contract to determine the appropriateness of the goal pursuant of this subparagraph;

(III) consider compliance with the requirements of any federal law concerning opportunities for minority and women-owned business enterprises which effectuates the purpose of this section; and

(IV) consult any relevant disparity studies conducted pursuant to the laws of New York or New Jersey.

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

(10) Provisions regarding procurement contracts which involve former officers or employees of the commission.

(11) Procedures regarding procurement contracts which are exempt from the publication requirements of article 4-C of New York's economic development law.

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

(A) providing for the commission to collect and to consult the specifications of New York state and New Jersey business enterprises in developing specifications for any procurement contract for the purchase of good, where possible, practicable, feasible and consistent with open bidding, except for procurement contracts for which the commission would be expending funds received from states other than New York or New Jersey. The commission shall, where feasible, make use of the stock item specification forms prepared by the New York commissioner of general services, and where necessary, consult with the New York commissioner of the office of general services, in developing such specifications and make such determinations; and

(B) with the cooperation of the New York department of economic development and through cooperative efforts with contractors, providing for the notification of New York state and New Jersey business enterprises of opportunities to participate as subcontractors and suppliers on procurement contracts let by the commission in an amount estimated to be equal to or greater than $1,000,000 and promulgating procedures which will ensure compliance by contractors with such notification. Once awarded the contract such contractors shall document their efforts to encourage the participation of New York state or New Jersey business enterprises as suppliers and subcontractors on procurement contracts

equal to or greater than $1,000,000. Documented efforts by a successful contractor shall consist of and be limited to showing that such contractor has (I) solicited bids, in a timely and adequate manner, from New York state or New Jersey business enterprises including certified minority and women-owned businesses, or (II) contacted the New York state department of economic development to obtain listings of New York state business enterprises, or (III) placed notices for subcontractors and suppliers in newspapers, journals and other trade publications distributed in New York state or New Jersey, or (IV) participated in bidder outreach conferences. If the contractor determines that New York state or New Jersey business enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made. If the contractor does not intend to use subcontractors on the contract, the contractor shall provide a statement verifying such intent; and

(C) except for procurement contracts for which the commission would be expending funds received from another state, the commission shall include in all bid documents provided to potential bidders a statement that information concerning the availability of New York state subcontractors and suppliers is available from the New York state department of economic development, which shall include the directory of certified minority and women-owned businesses, and it is the policy of New York state to encourage the use of New York state subcontractors and suppliers, and to promote the participation of minority and women-owned businesses where possible, in the procurement of goods and services; and

(D) with the cooperation of the community services division of the New York department of labor and through cooperative efforts with contractors, providing for the notification of New York state residents of employment opportunities arising in New York state out of procurement contracts let by the commission in an amount estimated to be equal to or greater than one million dollars; and promulgating procedures which will ensure compliance by contractors with such notification by requiring contractors to submit post-award compliance reports documenting their efforts to provide such notification through listing any such positions with the community services division, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements; and

(E) including in each set of documents soliciting bids on procurement contracts to let by the commission a statement notifying potential bidders located in foreign countries that the commission may assign or otherwise transfer offset credits created by such procurement contract to third parties located in New York state; providing for the assignment or other form of transfer of offset credits created by such procurement contracts, directly or indirectly, to third parties located in New York state, in accordance with the written directions of the New York commissioner of economic development; and providing for the corporation to otherwise cooperate with the department of economic development in efforts to get foreign countries to recognize offset credits assigned or transferred to third parties located in New York state created by such procurement contracts; and

(F) promulgating procedures which will ensure compliance with the federal equal employment opportunity act of 1972 (P.L. 92-261), as amended, by contractors of the corporation.

(13) For the purposes of this subdivision, (A) "New Jersey business enterprise" means a business enterprise, including a sole proprietor-

ship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods which are sought by the commission and which are substantially manufactured, produced or assembled in New Jersey, or services which are sought by the commission and which are substantially performed within New Jersey.

(B) "New Jersey resident" means a natural person who maintains a fixed, permanent, and principal home located within New Jersey and to which such person, whenever temporarily located, always intends to return.

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

(D) "New York state business enterprise" means a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods which are sought by the commission and which are substantially manufactured, produced or assembled in New York state, or services which are sought by the commission and which are substantially performed within New York state.

(v) The commission shall have the power from time to time to amend such procurement contract guidelines in accordance with the provisions of this subdivision.

(vi) The commission, as part of the guidelines established pursuant to this subdivision, shall establish policies regarding the preparation of publicly available reports on procurement contracts entered into by such corporation. Such policies shall provide, at the minimum, for the preparation of a report no less frequently than annually, summarizing procurement activity by the commission for the period of the report, including a listing of all procurement contracts entered into, all contracts entered into with New York state and New Jersey business enterprises and the subject matter and value thereof, all contracts entered into with certified minority or women-owned business enterprises and the subject matter and value thereof, all referrals made and all penalties imposed pursuant to section 316 of the executive law, all contracts entered into with foreign business enterprises, and the subject matter and value thereof, the selection process used to select such contractors, all procurement contracts which were exempt from the publication requirements pursuant to the laws of one or both states.

(vii) The commission shall annually prepare and approve a report on procurement contracts which shall include the guidelines, as specified in this subdivision, an explanation of the guidelines and any amendments thereto since the last annual report. Such report on procurement contracts may be a part of any other annual report that the corporation is required to make.

(viii) The commission shall annually submit its report on procurement contracts to the governor of New York and the governor of New Jersey and copies thereof to the New York senate finance committee, New Jersey senate budget committee, the New York assembly ways and means committee, and the New Jersey general assembly appropriations committee. The commission shall make available to the public copies of its report on procurement contracts upon reasonable request therefor.

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

(h) Comptroller approval of contracts. (i) Except as set forth in subparagraph (iii) of this paragraph, where the comptroller of the state of New York or the comptroller of the state of New Jersey determines pursuant to his or her authority to supervise the accounts of the commission, that contracts or categories of contracts in excess of $1,000,000 (1) to be awarded by the commission to a single source, a sole source or pursuant to any other method of procurement that is not competitive, or (2) which are to be paid in whole or in part from monies appropriated by each respective state to the commission for such contractual expenditure, require supervision in the form of prior review and approval of such contracts, and the comptroller of the state of New York or the comptroller of the state of New Jersey so notifies the commission of such determination, then any such contract entered into subsequent to such notification shall be submitted to the respective comptroller of the state of New York or the comptroller of the state of New Jersey for his or her approval and shall not be a valid enforceable contract unless it shall first have been approved by the respective comptroller of the state of New York or the comptroller of the state of New Jersey. Such notification shall identify the process for submission, the categories of contracts at issue and the time period for which such submission is to take place. The comptroller of the state of New York and the comptroller of the state of New Jersey shall promulgate such rules and regulations as may be necessary to carry out his or her responsibilities under this paragraph, including but not limited to the standards for determining which contracts will be subject to his or her review and for approving such contracts.

(ii) Where the comptroller of the state of New York or the comptroller of the state of New Jersey, pursuant to subparagraph (i) of this paragraph, has notified the commission that any contract or category of contracts shall be subject to his or her approval, the commission shall include or cause to be included in each such contract a provision informing the other party that such contract is subject to the comptroller of the state of New York or the comptroller of the state of New Jersey's approval pursuant to the respective comptroller's authority to supervise the accounts of the commission. If the comptroller of the state of New York or the comptroller of the state of New Jersey has not approved or disapproved any contract subject to his or her approval within ninety days of submission to his or her office, such contract shall become valid and enforceable without such approval.

(iii) This paragraph shall not apply to: (1) contracts entered into for the issuance of commercial paper or bonded indebtedness, other than contracts with the state of New York or the state of New Jersey providing for the payment of debt service subject to an appropriation; (2) contracts of purchase or sale of energy, electricity or ancillary services made by the commission on a recognized market for goods, services, or commodities in question in accordance with standard terms and conditions of purchase or sale at a market price; (3) contracts for the purchase, sale or delivery of power or energy, fuel, costs and services ancillary thereto, or financial products related thereto, with a term of less than five years; and (4) contracts entered into for the procurement of goods, services or both goods and services made to meet emergencies arising from unforeseen causes or to effect repairs to critical infrastructure that are necessary to avoid a delay in the delivery of critical services that could compromise the public welfare.

(iv) The provisions of this paragraph shall not grant or diminish any power or right to review contracts beyond or from that which the comp-

troller of the state of New York or the comptroller of the state of New Jersey may have pursuant to his or her authority. If any provisions of this section or its application to any person or circumstance is held invalid by a court of last resort, then this subdivision shall be deemed to be invalid in its entirety.

11. Subsidiaries of the commission. (a) The commission shall provide notice to the governor of each state, the majority leader of each house of the legislature of each state, the chair of the senate finance committee of New York, the chair of the senate budget and appropriations committee of New Jersey, the chair of the assembly ways and means committee of New York, and the chair of the assembly budget committee of New Jersey that it will be creating a subsidiary no less than 60 days prior to the formation of the subsidiary.

(b) The creation of a subsidiary corporation shall be approved by the board of commissioners.

(c) Within 60 days of the effective date of this act, and on or before the first day of January of each year annually thereafter, any subsidiary corporation, in cooperation with the commission, shall provide to the governor and legislature of each state a report on the subsidiary corporation. The report shall include for each subsidiary:

(i) The complete legal name, address, and contact information of the subsidiary;

(ii) The structure of the organization of the subsidiary, including the names and titles of each of its members, directors, and officers, as well as a chart of its organizational structure;

(iii) The complete bylaws and legal organization papers of the subsidiary;

(iv) A complete report of the purpose, operations, mission, and projects of the subsidiary; and

(v) Any other information the subsidiary corporation deems important to include in the report.

(d) Sixty days prior to the issuance of any debt by the subsidiary corporation, or the commission on behalf of the subsidiary corporation, the commission shall in addition to any other requirements concerning the issuance of debt by the commission, provide notice to the governor of each state, the majority leader of each house of the legislature of each state, the chair of the senate finance committee of New York, the chair of the senate budget and appropriations committee of New Jersey, the chair of the assembly ways and means committee of New York, and the chair of the assembly budget committee of New Jersey. For purposes of this section, as applicable to New York state "majority leader" shall mean the speaker of the assembly of the New York state legislature or temporary president of the senate of the New York state legislature. For purposes of this section, as applicable to the state of New Jersey "majority leader" shall mean the president of the senate or the speaker of the general assembly of the state of New Jersey.

12. (a) Disposition of property by the commission. (i) Any sale of real property by the commission shall be undertaken and conducted pursuant to the provisions of the existing laws governing the sale of real property by the commission in the state in which such real property is located and by approval of the board of commissioners.

(ii) No disposition of real property, or any interest in real property, shall be made unless an appraisal of the value of such real property has been made by an independent appraiser and included in the record of the transaction, and, provided further, that no disposition of any other real property, which because of its unique nature or the unique circum-

stances of the proposed transaction is not readily valued by reference to an active market for similar real property, shall be made without a similar appraisal.

(iii) Disposal of real property for less than fair market value. No property owned, leased, or otherwise in the control of the commission may be sold, leased, or otherwise alienated for less than its fair market value unless:

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

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

(iv) The board of commissioners shall adopt, within six months of the effective date of this act, appropriate rules and regulations concerning disposition, acquisition, and transfer of real property or any interest in real property by the commission which shall, at a minimum, include a requirement that the following information be made available to the board of commissioners at the meeting where approval of such a disposition, acquisition or transfer is scheduled:

(1) a full description of the property;

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

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

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

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

(v) Not less than 10 days in advance of any meeting of the board of commissioners of the commission at which the board of commissioners is to consider an action to authorize the sale of real property owned by the commission, the chief executive officer of the commission shall provide public notice of such proposed action along with relevant material terms and provisions of such sale including, but not limited to, the information made available pursuant to paragraph (b) of this subdivision, by posting on the port authority's website.

(vi) The chief executive officer may authorize or arrange for contracts for the sale of personal property owned by the commission upon such terms and conditions as the chief executive officer may deem proper and execute the same on behalf of the commission where the value of such personal property is not in excess of $1,000,000; provided, however, that personal property valued at more than $250,000 shall not be sold by authority of the chief executive officer other than to the highest bidder after public advertisement. Where the value of such personal property is in excess of $1,000,000, the sale of such property must be authorized by the board of commissioners of the commission upon such terms as the board of commissioners may deem proper.

(vii) The commission may retain brokers or third-party vendors that facilitate online auctions, or assist in disposing of surplus real and personal property of the port authority.

(b) Capital plan. (i) The commission shall adopt a 10-year capital plan that is developed using a comprehensive planning process and risk-based prioritization that considers asset condition, operational and revenue impact, threat assessment, customer service, regional benefit, and regulatory or statutory requirements. The capital plan shall be dependent upon the availability of sufficient funding and other resources to pursue the capital projects proposed for the 10-year period. Performance progress and revisions to reflect changes in programs, policies, and projects and the environment in which the commission operates shall be reviewed regularly by a committee designated by the board of commissioners, and the capital plan shall be revised periodically as necessary and appropriate, and shall be reviewed with the board of commissioners annually. The commission shall publish an annual report on the status of the capital program and such report shall be made publicly available on the commission's website. Prior to adoption of a capital plan, the commission shall make the proposed plan available for public review and comments on its public website for at least four weeks prior to approval, and all comments received by the commission are to be distributed to the board of commissioners for review prior to consideration of the capital plan.

(ii) The commission shall also provide that major capital projects are monitored by independent engineering consultants. The independent consultants shall prepare annual reports to be provided to the board and made available to the public. The annual reports prepared by independent consultants shall include, but not be limited to, a comparison of actual and target performance measures including, but not limited to, costs and construction schedules, and a narrative explanation of any discrepancy thereof. For the purposes of this subdivision: "major capital project" means an undertaking or program for the acquisition, creation, or development of any crossing, transportation facility, or commerce facility or any part thereof, with an estimated total project cost in excess of $500,000,000.

(iii) No less than 60 days prior to any board adoption of a capital plan, as described in paragraph (a) of this subdivision, or any major revision of the last adopted capital plan, the commission shall: (1) notify the assembly and senate of the New York state legislature and the general assembly and senate of the New Jersey state legislature of its intention to adopt a capital plan, or any major revision of the last adopted capital plan; (2) submit to the assembly and senate of the New York state legislature and the general assembly and senate of the New Jersey state legislature the proposed capital plan, or any proposal constituting a major revision of the last adopted capital plan, for review by each state legislature; and (3) make the proposed capital plan, including any proposal constituting a major revision of the last adopted capital plan, publicly available on the commission website. In either case, the notice shall recite the major elements of the capital plan to be adopted.

(iv) Within 60 days of the notice provided in this paragraph, the commission shall conduct a public hearing about the capital plan or any major revision thereof in New York state and in the state of New Jersey.

(v) The commission shall conduct a status update public hearing in New York state and in the state of New Jersey at least once every three years after the adoption of the capital plan by the commission. Such

public hearing shall be known as "capital status update hearing" and at such hearing the commission shall provide in detail a written description of the status of all capital plan projects and the costs and the expected costs of those projects. At such public hearing, the commission shall provide a financing plan that identifies the source of funding for each project. The commission shall provide an analysis that compares actual and target performance measures, and a detailed written explanation of any discrepancy thereof at the public hearing.

(c) Operating budget. The commission shall prepare a detailed annual operating budget beginning with the fiscal year commencing after the effective date of this act. A preliminary annual operating budget shall be made publicly available on the commission's website in July of every fiscal year and a final annual operating budget shall be made publicly available in February of each fiscal year.

13. Exemption from taxes, local laws. (a) The commission shall be performing essential governmental functions in exercising its powers and functions and in carrying out the provisions of this act and of any law relating thereto, and shall not be required to pay any taxes or assessments of any character, levied by either state or any local government thereof, upon any of the property used by it or its agents or contractors for the facilitation of the Gateway Program, or any income or revenue therefrom, including any profit from a sale, lease or exchange, or in connection with the transfer thereof or of any real property interest therein. Any bonds or other securities or obligations issued by the commission, their transfer and the interest paid thereon or income therefrom, including any profit from a sale or exchange, shall at all times be free from taxation by either state or any subdivision thereof.

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

14. Cooperation with governmental entitles. Notwithstanding any other provision of state, general, special, charter or local law to the contrary, each state and local government, any agency, instrumentality, department, commission or authority thereof and any bi-state agency are hereby authorized and empowered to cooperate with, aid and assist the commission in effectuating the provisions of this act, as it may be amended or supplemented hereafter.

15. Consent to suit, actions, or proceedings. Upon the concurrence of the state of New York, the state of New Jersey, and the state of New York consent to suits, actions or proceedings of any form or nature at

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

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

The commission shall be immune from liability as though it were the state of New York, except to the extent that such immunity is waived by the state of New York under section 8 of the New York Court of Claims Act.

16. Dissolution. (a) The commission shall dissolve on the first day of the thirty-sixth month following the completion of the Gateway Program, provided that plans have been adopted for the transfer of the component projects of the Gateway Program to appropriate agencies, instrumentalities, or entities, which shall include repayment of or an arrangement for the full repayment of any bonds or other securities issued and any other debt incurred for Gateway Program purposes without impairment of the creditworthiness of either state and that any receiving agency, instrumentality, or entity enters into an agreement concerning responsibility for maintenance and upkeep of the relevant component project, and further provided that Amtrak is not unduly prejudiced by such dissolution.

(b) The governor of New Jersey and the governor of New York may jointly determine that dissolution of the commission on the first day of the thirty-sixth month is impractical and may jointly agree to delay the dissolution until the first day of the forty-eighth month following completion of the Gateway Program to resolve any issues concerning transfer or any component projects or resolution of any outstanding debt or to remedy any undue prejudice to Amtrak resulting from dissolution at an earlier date.

(c) The commission shall not remain in existence beyond the first day of the forty-eighth month following completion of the Gateway Program.

(d) In the event that the commission is dissolved or transferred pursuant to this subdivision, any officer or employee of the commission shall be eligible for such transfer and appointment, in accordance with the provisions of section 70 of the New York civil service law without further examination. Any such officers or employees so transferred to the commission pursuant to this section, who are members of or benefit under any existing pension or retirement fund or system, shall continue to have all rights, privileges, obligations and status with respect to such fund or system as are now prescribed by law. Nothing set forth in this subdivision shall be construed to impede, infringe or diminish the rights and benefits that accrue to employees and employers through collective bargaining agreements, impact or change an employee's membership in a bargaining unit, or otherwise diminish the integrity of the collective bargaining relationship.

17. Amendment to agreement. The provisions of this agreement may be amended, altered, supplemented, or repealed from time to time by the action of the legislature of either state concurred in by the legislature of the other. For the purposes of this subdivision, "this agreement" means subdivisions one through eighteen of this act.

18. Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, including as not in accordance with federal law or federal constitutional requirements, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application and to this end the provisions of this act are declared to be severable.

§ 3. Paragraph (a) of subdivision 5 of section 209 of the civil service law, as added by chapter 929 of the laws of 1986, is amended to read as follows:

(a) In the event that the board certifies that a voluntary resolution of the contract negotiations between either (i) the New York city transit authority (hereinafter referred to as TA-public employer) and the public employee organization certified or recognized to represent the majority of employees of such TA-public employer, or (ii) the metropolitan transportation authority, including its subsidiaries, the New York city transit authority, including its subsidiary, and the Triborough bridge and tunnel authority (all hereinafter referred to as MTA-public employer) and a public employee organization certified or recognized to represent employees of such MTA-public employer not subject to the jurisdiction of the Federal Railway Labor Act and not subject to the provisions of subparagraph (i) [~~hereof~~] **of this paragraph**, which has made an election pursuant to paragraph (f) of this subdivision, **or (iii) the gateway development commission and the public employee organization certified or recognized to represent employees of such commission,** cannot be effected, or upon the joint request of the TA-public employer [~~or~~]~~,~~ the MTA-public employer (hereinafter jointly referred to as public employer) **or the gateway development commission** and any such affected employee organization, such board shall refer the dispute to a public arbitration panel, consisting of one member appointed by the public employer, one member appointed by the employee organization and one public member appointed jointly by the public employer and employee organization who shall be selected within ten days after receipt by the board of a petition for creation of the arbitration panel. If either party fails to designate its member to the public arbitration panel, the board shall promptly, upon receipt of a request by either party, designate a member associated in interest with the public employer or employ-

ee organization he is to represent. Each of the respective parties is to bear the cost of its member appointed or designated to the arbitration panel and each of the respective parties is to share equally the cost of the public member. If, within seven days after the mailing date, the parties are unable to agree upon the one public member, the board shall submit to the parties a list of qualified, disinterested persons for the selection of the public member. Each party shall alternately strike from the list one of the names with the order of striking determined by lot, until the remaining one person shall be designated as public member. This process shall be completed within five days of receipt of this list. The parties shall notify the board of the designated public member. The public member shall be chosen as chairman.

§ 4. Subdivisions 1, 2 and 3 of section 14-c of the transportation law, as added by chapter 639 of the laws of 1971, are amended to read as follows:

1. The department of transportation may cooperate and contract with the national railroad passenger corporation **or if deemed necessary, desirable or convenient by the commissioner to facilitate the purposes of this section, with the gateway development commission, the entity established by a chapter of the laws of two thousand nineteen, to the extent that such commission is so authorized to act under its authorizing statute,** for any intercity rail passenger services deemed necessary, convenient or desirable by the commissioner, within the amounts available by appropriation therefor, as such services are made available pursuant to the provisions of the rail passenger service act of nineteen hundred seventy and any acts amendatory or supplemental thereto, subject to the approval of the director of the budget **or pursuant to reimbursement available from the gateway development commission, any railroad company, any other state or agency, the federal government, any public authority of this state or any other state or two or more states, or any political subdivision or municipality of the state**. Notwithstanding any inconsistent law, general, special or local, the commissioner, as funds are made available for the purposes hereof, is hereby empowered to contract with such corporation **or commission** and to do all other things necessary, convenient or desirable on behalf of the state to secure the full benefits available under and pursuant to such act **and any other federal act which provides funding for intercity rail passenger services**, and to contract and do all other things necessary as hereinafter provided on behalf of the state to effect [~~the~~] **and facilitate** intercity rail passenger [~~service program~~] **services** which he determines is necessary, convenient or desirable **and the department of transportation may cooperate and contract with the gateway development commission for passenger rail activities, to the extent that the gateway development commission is so authorized to act under its authorizing statute, provided, however, that the department of transportation shall only contract with the gateway development commission if such contract is approved by that commission's board of commissioners in accordance with its authorizing statute**.

2. The commissioner shall coordinate the intercity rail passenger activities of the state and other interested public and private organizations and persons to effectuate the purposes of this section and shall have the responsibility for negotiating with the federal government with respect to intercity rail passenger service programs. The commissioner is authorized to enter into joint service agreements **and other agreements** between the state and any railroad company, any other state department or agency, the federal government, the Canadian govern-

ment, any other state or agency or instrumentality thereof, any public authority of this state or any other state **or two or more states**, or any political subdivision or municipality of the state, relating to property, buildings, structures, facilities, services, rates, fares, classifications, dividends, allowances or charges (including charges between intercity rail passenger service facilities), or rules or regulations pertaining thereto, for or in connection with or incidental to transportation in part upon intercity rail passenger service facilities. Intercity rail passenger service facilities include the right of way and related trackage, rails, cars, locomotives, or other rolling stock, signal, power, fuel, communication and ventilation systems, power plants, stations, terminals, **tunnels,** storage yards, repair and maintenance shops, yards, equipment and parts, offices and other real estate or personnel used or held for or incidental to the operation, rehabilitation or improvement of any railroad operating intercity rail passenger service or to operate such service, including but not limited to buildings, structures, and rail property.

3. [~~The~~] **Notwithstanding any other provision of law, general, special, charter or local, the** commissioner may on such terms and conditions as he may determine necessary, convenient or desirable, establish, construct, effectuate, operate, maintain, renovate, improve, extend or repair any such intercity rail passenger service facility or any related services and activities, or may provide for such by contract, lease or other arrangement on such terms as the commissioner may deem necessary, convenient or desirable with any agency, corporation or person, including but not limited to any railroad company, any state agency, the federal government, the Canadian government, any other state or agency or instrumentality thereof, any public authority of this or any other state **or two or more states**, or any political subdivision or municipality of the state.

§ 5. a. There shall be three commissioners of the Gateway Development Commission appointed from this state, in accordance with section two of this act, who shall each serve at the pleasure of the governor.

b. The three commissioners shall be appointed by the commissioner of the department of transportation.

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

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

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

f. Any commissioner from this state may be removed from office shall be removable by the commissioner of the department of transportation, for inefficiency, breach of fiduciary duty, neglect of duty or misconduct in office, provided, however, that such member shall be given a copy of the charges against him and an opportunity of being heard in

person, or by counsel, in his or her defense upon not less than ten days' notice.

g. The collective vote of the New York commissioners of the Gateway Development Commission shall be determined by the affirmative vote of at least two of the New York commissioners.

§ 6. This act shall take effect immediately; provided however, that:

(a) section two of this act shall take effect upon the enactment into law by the state of New Jersey of legislation having an identical effect with this act, but if the state of New Jersey shall have already enacted such legislation, this act shall take effect immediately; provided that the state of New Jersey shall notify the legislative bill drafting commission upon the occurrence of the enactment of the legislation provided for in this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law; and

(b) the amendments to subdivision 5 of section 209 of the civil service law made by section three of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith.