

CHAPTER 800

AN ACT in relation to rapid transit in cities containing a population of more than one million inhabitants, constituting chapter forty-eight-a of the consolidated laws
Became a law April 28, 1941, with the approval of the Governor.
Passed three-fifths being present

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

Article 1. Secs. (1-2)

2. Secs. (10-17)

3. Secs. (20-23)

4. Secs. (30-38)

5. Secs. (40-46)

6. Secs. (50-73)

7. Secs. (80-82)

8. Secs. (90-92)

9. Secs. (100-113)

ARTICLE I

SHORT TITLE AND DEFINITIONS

Section 1. Short title.

2. Definitions.

Section 1. Short title. This chapter shall be known as the rapid transit law.

§ 2. Definitions. a. Unless expressly otherwise provided, whenever used in this chapter, the following terms shall mean or include:

1. "Board of assessors." The board in the city charged with the duty of making assessments for assessable improvements other than those required by law to be confirmed by a court of record.

2. "Board of estimate." The board of estimate or other analogous local

authority of the city.

3. "Board of revision of assessments." The board authorized by law finally and conclusively to determine objections to proposed awards or assessments fixed and determined by the board of assessors.

4. "Board of transportation." The board in the city established pursuant to section ten of this chapter.

5. "Bonds." Bonds, corporate stock, debentures, notes and other evidences of indebtedness maturing more than one year after their respective dates, secured or unsecured.

6. "Bondholders." The owners of bonds.

7. "City." A city containing a population of more than one million inhabitants according to the last federal census.

8. "Commission." The public service commission--state division of the department of public service.

9. "Comptroller." The comptroller, auditor or other chief financial officer of the city.

10. "Contract" or "lease." A contract, agreement, grant, franchise, consent, certificate, authorization, authority, license or any other form whereby rights are granted to use streets for railroads or to construct, equip, provide, maintain or operate railroads.

11. "Corporation counsel." The corporation counsel or other principal legal adviser of the city.

12. "Devices and appurtenances." Devices and appurtenances deemed necessary by the board of transportation or the commission, within their respective jurisdictions, to secure the greatest efficiency, public convenience and safety, including the number, location, description and plans and specifications for the stations, suitable supports, turnouts,

switches, sidings, connections, landing places, buildings, structures, platforms, stairways, elevators, telegraph and signal devices, facilities for access to the surface, and other suitable appliances incidental and requisite to what such board or commission, within their respective jurisdictions, may approve as the best and most efficient system of rapid transit in view of the public needs and requirements, including, in its discretion, operation of a railroad or some portion thereof by any device or means, other than separate cars or trains, in the construction of which stationary means for guiding a conveyance in a definite path and means for propelling such conveyance are necessary elements.

13. "Equipment." When used in a contract for equipment of any railroad, shall include all such rolling stock, motors, boilers, engines, wires, ways, conduits and mechanisms, machinery, tools, implements and devices of every nature whatsoever used for the generation or transmission of motive power and including all power houses, and all apparatus and all devices for signaling and ventilation as may be required for the operation of such road and specified in the contract for such equipment.

14. "Facilities." Routes, tracks, extensions, connections, terminals or facilities.

15. "Mayor." The mayor of the city.

16. "Person." A natural person, firm or corporation.

17. "President of the borough." A president of a borough or other chief executive officer having principal charge of the streets of the city.

18. "Property" or "property rights." Real estate, real property, lands, rights, terms, interests, privileges, franchises or easements of owners, abutting owners or others.

19. "Railroad." A rapid transit railroad, street surface railroad,

omnibus line, any other transit facility and any railroad in the city used for local service in the transportation of passengers as common carriers for hire, jurisdiction whereof is vested in the board of transportation or the commission whether any such railroad exists or is constructed in the future, and any portion thereof and the rights, leaseholds or other interests therein, together with the equipment thereof and power plants and other instrumentalities used or useful therefor or in connection therewith. For the purposes of subdivisions c through l of section thirty-four of this chapter the term shall also include improvements, additions, property, devices and appurtenances other than rolling-stock, necessary either for construction or operation.

20. "Railroad company." The owner, lessee or operator of a railroad.

21. "Recapture" or "recaptured." The exercise by the city of its right to retake a railroad of the city or any part thereof leased to a railroad company under lease made pursuant to the provisions of this chapter by terminating the lease as to such railroad or any part thereof pursuant to and in accordance with its terms and provisions.

22. "Street." A public street, marginal street, avenue, road, bridge, viaduct, highway, boulevard, driveway, park, parkway, dock, bulkhead, wharf, pier, ground, river, water, square, place or land within the city.

23. "Sub-surface structures." Galleries, ways, subways or tunnels for pipes, sewers, gas or water pipes or mains, electric wires, conduits, and other sub-surface structures and conductors proper to be placed underground or for the transmission of electricity, steam, water, air or other source or means of power or of signals or messages necessary or convenient for or in the construction or operation of a railroad, or for the transportation of materials necessary for such construction or operation or to provide temporary or permanent ways or courses for any such structures or other means or sources of transportation.

b. Words in the singular number shall include the plural, and those in

the plural number shall include the singular.

c. The term "may" is permissive in character, and not mandatory or directory, as to any action or function to which it is related in the text.

d. The term "shall" is mandatory, except when used as a synonym for the term "will" indicating a future tense.

ARTICLE II

BOARD OF TRANSPORTATION

- Section 10. Board of transportation established; appointment; term; removal.
- 11. Meeting of board; official seal.
 - 12. Record of proceedings.
 - 13. Actions and proceedings.
 - 14. Offices, assistants and employees.
 - 15. Payment of salaries and expenses.
 - 16. Vacations.
 - 16-a. Sick leave.
 - 17. Advertising for proposals.

§ 10. Board of transportation established; appointment; term; removal.

a. There shall be a board of transportation in the city. Such board shall possess the powers and duties hereinafter specified. The board shall consist of three members, to be appointed by the mayor of such city. The term of office of a member of the board shall be six years from the first day of July of the calendar year in which he shall be appointed. Vacancies shall be filled by appointment by the mayor of such city for the unexpired terms. A member of the board designated by the mayor shall be the chairman during his term of office. Each member shall be a resident of such city. He shall receive an annual salary to be fixed by the board of estimate. Such salary shall not be decreased during the term of office of such commissioner. He shall take, subscribe and file in the office of the city clerk of such city the constitutional

oath of office before entering upon the duties of such office.

b. The mayor of such city may remove any member of the board for inefficiency, neglect of duty or misconduct in office, giving him a copy of the charges against him and an opportunity of being publicly heard in person, or by counsel, in his own defense, upon not less than ten days' notice. If such member shall be removed, the mayor shall file in the office of the city clerk a complete statement of the charges made against such member, and his findings thereon, together with a complete record of the proceedings.

§ 11. Meeting of board; official seal. The board of transportation shall hold stated meetings at least once a month during the year at its principal office. The board shall have an official seal, the design of which shall be adopted by the board and filed with the city clerk. A majority of the members of the board may transact any business, perform any duty or exercise any power of the board. Any member or commissioner, or deputy commissioner, may hold any hearings authorized or required to be held by or before the board or superintend the opening of any bids or proposals, but a record shall be made of all hearings upon charges and together with any recommendations, shall be referred to the board for decision. All proceedings of the board and all documents and records in its possession shall be public records, and open to public inspection, except such documents and records as shall be prepared by or for the counsel for use in actions or proceedings to which the city or the board of transportation is a party.

§ 12. Record of proceedings. The secretary of the board of transportation, or other officer or employee designated by it, shall keep a full and true record of all its proceedings. The record of proceedings shall be printed as the minutes of the transactions of the board.

§ 13. Actions and proceedings. a. The board of transportation may sue

in the name and behalf of the city. It may in the name of and in behalf of the city bring action of specific performance or may bring a special proceeding to compel the performance within such city by any person of any duty or obligation with reference to or arising out of the construction or operation of any railroad under, or by reason of, any grant made or right acquired under this chapter, or out of or by reason of any contract made or authorized by it or any predecessor board, commission or commissioner within the city, or it may in behalf of and in the name of such city bring actions to recover damages for any violation of contract or duty, or for any wrong committed by any such person by reason of any nonperformance or violation of duty under the provisions of this chapter or under any contract or stipulation made in pursuance of any provisions of this chapter.

b. Every action or proceeding brought by the board of transportation, and every action or proceeding in which an injunction is had or sought against the board or such city, or against any person who or which shall have entered into a contract under the provisions of this chapter, by reason of any act or thing done, proposed or threatened under or by virtue of any provision of this chapter, or is sought against any person claiming or claiming to act under any grant or franchise under this chapter, and every action or proceeding in which the constitutionality of any part of this chapter shall or may be brought in question, shall have a preference above all causes not criminal on the calendar of every court, and may be brought on for trial or argument upon notice of eight days for any day of any term on which the court shall be in session.

§ 14. Offices, assistants and employees. a. The board of transportation may rent such offices for a period not to exceed twenty-one years and employ such deputy commissioners, engineers, attorneys and other persons, from time to time, as, in its discretion, it may deem necessary to the proper performance by it of its duties as prescribed in this chapter.

b. The board of transportation is empowered to organize an operating division for the operation and maintenance of a publicly owned and

operated railroad, separate and distinct from the organization engaged in planning and supervising the construction and equipment of railroads prior to operation, and is hereby authorized to establish and specify the duties and the regulations which shall govern the work and conduct of employees in such division and the penalties which may be imposed for disobedience of or violation of such regulations. Appointments and promotion to any position in any class of employment in such division shall be subject to the provisions of the civil service law. Employees holding positions in such operating division shall be notified in writing of any charge or accusation of dereliction of duty which is to be considered by the board of transportation, and shall be allowed at least five days for answering such charge in writing and be entitled to a hearing thereon, at which he shall be entitled to be represented by a person of his own choosing. If in the judgment of the board such charges of delinquency or misconduct are sustained, such employee may be suspended without pay for a period not to exceed thirty days, or may be dismissed from such employment as provided in section twenty-two of the civil service law. The board may temporarily suspend without pay any such employee charged with dereliction of duty pending hearing on any such charges, but if the board shall determine that such charges are not sustained by the evidence adduced at the hearing thereon, the employee so suspended shall be entitled to pay for the time of such temporary suspension.

§ 15. Payment of salaries and expenses. The salaries of the members of the board of transportation and the salaries and expenses paid or incurred in the exercise of their powers and duties shall be chargeable to such city, and shall be audited and paid as follows: The board of estimate, on requisition duly made by the board of transportation, stating the purposes for which such moneys are required, shall appropriate such sums of money as the board of estimate may deem necessary for the payment of such salaries and expenses. The city shall not be liable for any indebtedness incurred by the board, or any member thereof, in excess of such appropriations. It shall be the duty of the comptroller, after such appropriation shall have been duly made, to audit and pay the salaries and expenses of the board, upon vouchers

therefor to be furnished by the board, which payment shall be made in like manner as payments are made by the comptroller of claims against and demands upon such city. In case of municipal operation all salaries and expenses incurred in connection with such operation shall be included in the expense of operation.

§ 16. Vacations. The board of transportation shall grant to every employee under its supervision, who shall have been in such employ for at least one year, a vacation of not less than two weeks in each year and for employees in such employ less than one year, a vacation pro-rated on the basis of one day per month while in such employ, and for such further period of time as in the opinion and judgment of such board, the duties, position, length of service and other circumstances may warrant, at such time as such board may fix. During such vacations such employees shall be allowed the same compensation as if actually employed.

§ 16-a. Sick leave. 1. Subject to the limitations hereinafter set forth, the New York city transit authority, successor to the board of transportation of the city of New York under title fifteen of article seven of the public authorities law and hereinafter referred to as the authority, shall grant to every employee under its supervision, other than a member of the uniformed force of the New York city transit police, who shall have been in its employ for at least one year, sick leave with pay on each working day when he is unfit for work on account of illness, up to a total, in any one year, of twelve days plus the number of days, not exceeding eighty-four, by which the total amount of sick leave with pay allowed to such employee by the board of transportation and the authority in prior years since the thirtieth day of April, nineteen hundred forty-one, shall have been less than one day per month of employment during such prior years, but in no event shall the authority be required to allow any employee sick leave with pay for more than a total of ninety-six working days in any one year. To every employee in its employ less than one year, the authority, subject to the limitations herein set forth, shall grant sick leave with pay on each

working day when such employee is unfit for work on account of illness, up to a total of one day for each calendar month during which, or the major part of which, the employee shall have been in such employ. The term "year", as used in this section, shall mean a period of twelve months beginning on the first day of May and ending on the following thirtieth day of April. For the purpose of this section an employee shall not be deemed to have been in the employ of the board of transportation or the authority during a period of leave of absence without pay excepting where such leave of absence is for ordered military duty. For any day on which sick leave with pay is required by this section to be granted to an employee, the pay to be allowed him shall be the same as if he had worked in accordance with his regular work schedule on that particular day. Sick leave with pay shall not run concurrently with any vacation.

Notwithstanding the foregoing provisions of this section, the authority shall not be required to pay an employee for the first working day in any period of leave of absence for illness unless such leave of absence shall reach a total of nine or more consecutive working days, in which event the employee shall receive pay for the total leave up to the allowable limit.

2. The authority may grant to a member of the uniformed force of the New York city transit police, who shall have been in its employ for at least six months, sick leave with pay at the rate of one-half of his rate of pay for the first three working days of illness and full pay on and after the fourth consecutive working day on which he is unfit for work on account of illness, until such illness shall have continued for one year. If such member of the uniformed force of the New York city transit police shall become temporarily disabled for performance of duty as a natural and proximate result of service as such member, he may be granted sick leave with full pay from the date of such disability until he recovers therefrom and is restored to duty. In the event the authority determines not to grant to members of the uniformed force of the New York city transit police the sick leave benefits contemplated in this subdivision, or having granted such sick leave benefits discontinues such benefits, then such members shall be considered

employees of the transit authority subject to the provisions of subdivision one of this section, notwithstanding the exception as to such members set forth in subdivision one hereof.

3. The authority may adopt rules and regulations within the specific limitations of this act to implement this section. No waiting period in excess of one working day shall be required of any employee before he shall be granted a leave of absence once he shall have become unfit for work on account of illness. The authority may require that an employee submit satisfactory medical evidence of illness and further the authority may require that an employee submit to physical examination by a physician employed by the authority, provided such physical examination is without charge or loss of compensation to said employee, as a condition of the granting of sick leave with pay. The authority may grant sick leave with pay to any employee for a period of time beyond that required by this section if, after a physical examination by a physician employed by the authority, and in the opinion and judgment of such authority, the duties, position or length of service of the employee, or other circumstances surrounding his employment, warrant such additional sick leave with pay.

§ 17. Advertising for proposals. The board of transportation before awarding any contract except where there is an extraordinary emergency involving danger to life or property or where the estimated expense of a contract does not exceed twenty-five thousand dollars shall advertise for proposals for such contract by a notice to be printed once a week for two successive weeks in no less than two of the daily newspapers published in such city, and in such newspapers published elsewhere than in such city as such board shall determine. Such notice shall set forth and state the points within the city, between which such road is to run, the general method of construction, the route to be followed, the term of years for which it is proposed to make such contract, and such other details and specifications as the board shall deem to be proper. Such notice shall state the time and place at which such proposals will be opened. The board shall attend at the time and place so specified, and shall publicly open all proposals that shall have been received, but the

board shall not be bound to accept any proposals so received, but may reject all such proposals and readvertise for proposals in the manner provided in this chapter, or may accept any of such proposals as, in the judgment of such board, will best promote the public interest, and award a contract accordingly. All such contracts must before execution be approved as to form by the corporation counsel and consented to by the board of estimate and the mayor of such city.

ARTICLE III
**DETERMINATION OF NECESSITY FOR RAILROADS
AND APPROVAL OF ROUTES**

- Section 20. Board of transportation to determine necessity for railroads; routes; plan; consents; streets excepted.
21. Approval and consent of board of estimate and the mayor.
- 21-a. Construction and equipment of a rapid transit railroad tunnel or tunnels.
- 21-b. Construction and equipment of a rapid transit railroad line.
22. Detailed plans; sub-surface structures.
23. Interference with tracks and sub-surface structures.

§ 20. Board of transportation to determine necessity for railroads; routes; plan; consents; streets excepted. a. The board of transportation upon its own motion may proceed, from time to time, to consider and determine whether it is for the interest of the public and the city that a railroad should be established therein, or whether it is for the interest of the public and such city that any railroad which is to be or is owned by such city by virtue of the provisions of this chapter or any other law, should be extended beyond its previously established routes, or that any such routes should be modified or changed, or that any of such previously established methods of transportation should be replaced by other more convenient and serviceable methods. Upon the request in writing of the board of estimate at any time, such board of transportation shall proceed forthwith to consider and determine such questions, and in each case

such board of transportation shall conduct such an inquest and investigation as may be deemed necessary in the premises. If, after any such consideration and inquest, such board of transportation shall determine that a railroad, in addition to any already existing, authorized or proposed, or any extension, modification or change of the route or method of transportation of any previously established railroad that may be or is owned by such city by virtue of the provisions of any law, are necessary for the interest of the public and such city, it shall proceed to determine and establish the route thereof and the general plan of construction. Such general plan shall show the general mode of operation and contain such details as to manner of construction as may be necessary to show the extent to which any street is to be encroached upon and the property abutting thereon affected. Such board of transportation, from time to time, may locate the route of such railroad over, upon, under, through and across any streets, including blocks between streets, or partly over, under, upon, through and across any streets and partly through blocks between streets. The consent of the owners of one-half or more in value of the property bounded on and the consent also of the board of estimate shall be first obtained, or in case the consent of such property owners cannot be obtained, the determination of the appellate division of the supreme court, given after due hearing of all parties interested, shall be taken in lieu of the consent of such property owners as provided in section twenty-one of this chapter.

b. No public park nor any lands or places, lawfully set apart for, or occupied by, any public building of any city or county, or of the state, or of the United States, nor those portions of Grand, Classon, Franklin, Bedford avenues and Downing street in the borough of Brooklyn, city of New York, lying between the southerly line of Lexington avenue and northerly line of Atlantic avenue, nor that portion of the borough of Brooklyn lying between and circumscribed by such avenues and streets exclusive of that portion of the streets in the foregoing territory upon or through which elevated railroads were in operation on the thirty-first day of January, eighteen hundred ninety-one; nor that portion of Classon avenue in such borough lying between the northerly line of Lexington avenue and southerly line of Park avenue, nor that

portion of Washington avenue in such borough lying between Park and Atlantic avenues, nor that portion of Nostrand avenue in such borough lying northerly of the northerly line of Eastern parkway, nor Debevoise place, Irving place and Lefferts place, Lee avenue, Waverly avenue, St. James place, Cambridge place, Vanderbilt avenue and Clinton avenue in such borough of Brooklyn, nor that portion of the city of Buffalo lying between Michigan and Main streets, nor any part of Fifth avenue, in the borough of Manhattan, city of New York, nor that portion of any street which, on the thirty-first day of January, eighteen hundred ninety-one was actually occupied by any elevated railroad structure, shall be occupied by any corporation for the purpose of constructing a railroad in or upon any of such streets, or upon or along either of such excepted streets. It shall be lawful for such board of transportation to locate the route of a rapid transit railroad by tunnel under any such streets and to locate the route of any railroad to be built, under this chapter, across any of the streets which, on the thirty-first day of January, eighteen hundred ninety-one, were occupied by an elevated railroad structure in the city of New York, or across any of the streets excepted in this chapter at any point at which, in its discretion, the board of transportation may deem necessary in the location of any route, or under, or under and along, any of such streets which, on such date, were so occupied or so excepted in this chapter. Nothing in this chapter shall authorize the construction of an elevated railroad on Broadway south of Thirty-third street, nor on Madison avenue in the borough of Manhattan, city of New York. It shall not be lawful to grant, use or occupy, for the purposes of an elevated railroad, except for the purpose of crossing the same, any portion of the following named streets in the borough of Manhattan, city of New York, that is to say: Second avenue, below Twenty-third street; Fourteenth street, between the easterly line or side of Seventh avenue, and the westerly side of Fourth avenue; nor Eleventh street, west of Seventh avenue, nor any part of Bank street; Nassau street; Printing House square, south of Frankfort street; Park row, south of Tryon row; Broad street and Wall street.

c. The provisions of this section, with reference to any railroad for which routes and a general plan had been adopted by the board of rapid transit railroad commissioners of the city before the twenty-third day

of April, nineteen hundred, and for the municipal construction of which a contract had been made by the city before such date, shall be deemed to have been in full force from before the time when the routes and general plan for such railroad were so adopted by the board of rapid transit railroad commissioners.

d. Upon the adoption of any route and general plan of construction of any railroad, under this chapter, the board of transportation shall prepare and file in the office of the secretary of the board of estimate, at or prior to the time of submission of such route and general plan of construction to the board of estimate and the mayor for approval, a statement signed by at least two members of the board of transportation and countersigned by its chief engineer, showing in detail the estimated cost of construction and equipment of such railroad and the estimated time required for the completion of such construction and equipment, together with an estimate by years of the prospective results of the operation of such railroad over a term of ten years from the estimated date of the beginning of operation thereof.

§ 21. Approval and consent of board of estimate and the mayor. a. After any determination by the board of transportation of any such route and of any general plan of construction or establishment of such railroad the board shall transmit to the board of estimate a copy of such plans and conclusions as adopted. It shall be the duty of such board of estimate upon receiving such copy of plans and conclusions, to hold a public hearing upon the proposed route or any extension, modification or change of route, other than a rapid transit route, at which citizens shall be entitled to appear and be heard. No such hearing shall be held until after notice thereof and of the proposed route, extension, modification or change of route, other than a rapid transit route, and the proposed resolution authorizing the same shall have been published in full for at least fifteen days, except Sundays and legal holidays, immediately prior thereto in the City Record, and at least twice in two newspapers published in the borough or boroughs affected, to be designated by the board of estimate. Within sixty days after the copy of such plans and conclusions adopted by the board of

transportation shall have first been received by such board of estimate, a final vote shall be taken thereon, by ayes and nays, according to the number of votes by law pertaining to each member of such board in the form of a vote upon a resolution to approve such plans and conclusions and to consent to the construction of a railroad in accordance therewith. The board of estimate within sixty days shall transmit its written consent or refusal to the board of transportation. The period of sixty days, however, may be extended by resolutions adopted by both such boards.

b. Upon the adoption of such a resolution by a majority vote of all the members of such board of estimate, according to the number of votes by law pertaining to each member of any such board and the approval of the mayor, such plans and conclusions shall be deemed to have been finally consented to and adopted.

c. Upon obtaining the approval and consent of the board of estimate and the mayor, as above provided, the New York city transit authority shall publish a notice of the intent of the authority to construct the railroad in accordance with the route and general plan for which approval and consent of the board of estimate and the mayor has been obtained, which notice shall be published for fifteen days in the city record and at least twice in two newspapers of general circulation in the borough or boroughs affected. Said notice shall contain a description of the route of the railroad proposed to be constructed and a notice to abutting property owners setting forth the time within which such owners may file with the authority objections to the construction of said railroad. Such time shall be not less than ninety days after the first publication of the said notice in the city record and said two newspapers. An abutting property owner who fails within said period to file with the authority a verified objection setting forth a general description of his property, the assessed valuation thereof and the grounds for the objection, shall be deemed to have consented to the construction of the railroad in accordance with the route and general plan approved and consented to by the board of estimate and the mayor. For the purposes of this chapter, the value of the property bounded on a route along which it is proposed to construct a railroad shall be

ascertained and determined from the assessment rolls of the city, confirmed or completed last before the board of estimate and the mayor shall have given their consent as above provided. In the event that the owners of less than one-half in value of the property bounded on object within the time limited therefor to the construction of such railroad, the authority shall certify to the mayor and to the board of estimate that the notice provisions hereof have been complied with and that less than the owners of one-half in value of the property bounded on have duly filed objections, whereupon the authority may construct and operate the said railroad. In the event that the owners of one-half or more in value of the property bounded on shall within such period object to the construction of the railroad as in this section provided, consent for the construction of the said railroad shall be obtained in the manner provided in paragraph d of this section.

d. In the event that the owners of one-half or more in value of the property bounded on any route file objections to the construction of a railroad as provided in paragraph c of this section, the New York city transit authority shall apply ex parte to the appellate division of the supreme court in any department in which such railroad or a part thereof is to be constructed, for the appointment of a commissioner to determine and report after due hearing whether such railroad ought to be constructed. Such appellate division shall appoint a disinterested person who shall act as a commissioner and such commissioner within ten days after his appointment shall cause public notice of his first hearing to be given in a manner directed by such appellate division and he may adjourn from time to time. After public hearing of all parties interested in whether such railroad ought to be constructed such commissioner shall report the evidence taken to such appellate division, together with his recommendation whether such railroad ought to be constructed, which report shall be submitted for confirmation by the appellate division. Such report shall be made within sixty days after the appointment of such commissioner unless the court, for good cause shown, shall extend such time for an additional period of not to exceed thirty days. If such appellate division determines that the railroad ought to be constructed the authority may proceed to construct such railroad in accordance with the route and general plan approved and

consented to by the board of estimate and the mayor.

e. No such city shall be required to obtain the permission and approval of, or a certificate of public convenience and necessity from, the department of public service or any division thereof, to operate any surface railroad, unless the route of such railroad shall parallel over the major portion thereof the route of an existing railroad, not publicly owned and less than three blocks distant therefrom.

§ 21-a. Construction and equipment of a rapid transit railroad tunnel or tunnels. a. The city of New York and the New York city transit authority, acting under and pursuant to the provisions of this chapter and of title nine of article five of the public authorities law, are hereby authorized to effect the construction and equipment of a rapid transit railroad tunnel or tunnels between the boroughs of Manhattan and Queens in the city of New York, along the following route:

A route lying wholly within the boroughs of Manhattan and Queens which shall begin at a point on East Sixty-third street at the westerly line of York avenue in the borough of Manhattan where a connection can conveniently be made to other future rapid transit railroads; thence extending easterly along East Sixty-third street under York avenue and Franklin D. Roosevelt drive; thence continuing easterly under the West channel of the East river, Welfare island and the East channel of the East river to the borough of Queens; thence continuing easterly under Queens bridge park and Vernon boulevard to a point on Forty-first avenue at the easterly line of Vernon boulevard where a connection can conveniently be made with other future rapid transit railroads.

b. For the purposes of this chapter, such rapid transit railroad tunnel or tunnels shall be deemed to be a rapid transit railroad.

§ 21-b. Construction and equipment of a rapid transit railroad line.
1. The New York city transit authority, acting under and pursuant to the provisions of this chapter and of title nine of article five of the

public authorities law, is hereby authorized to effect the construction and equipment of a rapid transit line in the borough of Queens in the city of New York, along the following route:

A route lying wholly within the borough of Queens beginning at a point under Forty-first avenue at or near Twenty-ninth street, where a connection can conveniently be made with the tracks at the easterly end of the Sixty-third street line; thence curving and extending northeasterly to a point under Northern boulevard across Fortieth avenue, Thirty-first street, Thirty-ninth avenue, Honeywell street, Thirty-second street, and Thirty-third street to a point under Thirty-fourth street and Northern boulevard.

2. Notwithstanding any defect, irregularity or omission of any lawful requirement or lack of statutory authority therefore, the acts and proceedings heretofore taken by the New York city transit authority in adopting, approving or consenting to plans and conclusions, general plan of construction, route or any other matters, with respect to the rapid transit line provided for in this section, are hereby legalized, ratified, validated and confirmed.

3. Notwithstanding any other state or local law, this section shall constitute the sole state or local governmental authority required for the construction and equipment of the route set forth in subdivision one of this section.

§ 22. Detailed plans; sub-surface structures. a. When the consents of the board of estimate, the mayor and the property owners, or, in lieu thereof, the authorization of such appellate division of the supreme court upon the report of commissioners, shall have been obtained, the board of transportation shall at once proceed to prepare detailed plans and specifications for the construction of such railroad in accordance with the general plan of construction, including all devices and appurtenances. Such board, in its discretion, may include in such plans provisions for sub-surface structures, whenever necessary so to do, in order to permit the proper construction of any railroad herein provided

for in accordance with the plans and specifications of the board of transportation or for any other purpose in furtherance of the public interest or convenience.

b. The board of transportation, from time to time, may alter such detailed plans and specifications, but always so that the same shall accord with the general plan of construction; but whenever a contract shall have been made for the construction of any railroad herein provided for, no such alteration shall be made by such board without the consent of the contractor and his sureties, except as liberty shall have been reserved in such contract by such board for such alteration.

c. Whenever the construction of any railroad, depressed way, subway or tunnel under the provisions of this chapter shall interfere with, disturb or endanger any duly authorized sub-surface structures, the work of construction at such points shall be conducted in accordance with the reasonable requirements of the agency of the city having the care of and the jurisdiction or control over such sub-surface structures so interfered with, disturbed or endangered.

d. Where, under the direction of the board of transportation or in pursuance of any general plan adopted or of any contract made by such board, galleries, ways, subways or tunnels shall be constructed to contain sub-surface structures, such galleries, ways, subways or tunnels shall be maintained by such city and shall be in the care and charge of the board of transportation and subject to such regulations as it shall prescribe not inconsistent with the provisions of this chapter. Any revenue derived therefrom shall be paid into the treasury of such city, except that where bonds shall have been issued to provide for the cost of construction or equipment of such railroads, such amounts shall be paid into the sinking fund of the city, if there be one, or if not then into the sinking fund to be established and created out of the annual rentals of such road, as provided in section thirty-four of this chapter. Provided, however, that any person who or which at the time of the construction of such galleries, ways, subways, or tunnels shall own sub-surface structures in a street in which such galleries, ways, subways or tunnels shall be constructed pursuant to this chapter, shall

be entitled to the use of such galleries, ways, subways or tunnels for such sub-surface structures in the same manner as such person shall be entitled by law to the use of such street, and that no rent shall be charged for such use, except a reasonable charge to defray the actual cost of maintenance, unless such sub-surface structures shall be of greater capacity than those theretofore owned by such person in such street.

e. If the capacity of any such sub-surface structure, so placed in such gallery, way, subway or tunnel shall be increased, the rent shall be charged only for such increased capacity. The placing in any such galleries, ways, subways or tunnels of the sub-surface structures of any person owning such structures for electrical conductors, shall not in any wise affect the right of such person to charge and demand such compensation or rent for the use of such structures by other persons as is, or may be, permitted by law.

f. Nothing in this chapter shall be construed as granting, enlarging, changing, or in any manner validating any right, privilege or franchise, or any claimed or alleged right, privilege or franchise, to maintain, operate, or possess any sub-surface structures in any street.

§ 23. Interference with tracks and sub-surface structures. a.

Wherever or whenever the route selected by the board of transportation or one of its predecessors for the construction of such railroad shall intersect, cross or coincide with any railroad track occupying the surface of any street, or the construction or operation of such railroad shall interfere with any sub-surface structures, any person constructing any railroad or part of a railroad under any contract made with the board of transportation or one of its predecessors, is hereby authorized, for the purpose of constructing such work, to remove the track of any such railroad, or any of such sub-surface structures. Such removal shall be done in such manner as to interfere as little as possible with the practical operation or workings of such railroad, or the works or business of the owners of any of such sub-surface structures. Upon the construction of such railroad built under and in

conformity with the provisions of this chapter, where such removals or changes have been made, such track or sub-surface structures shall be restored as nearly as may be to the condition in which they were previous to the construction of any such railroad built under the provisions of this chapter. Any damages which such owner may sustain shall be ascertained by a commissioner to be appointed in the manner provided by the condemnation law.

b. For the purpose of the construction or operation of any railroad under the provisions of this chapter, the board of transportation may remove or cause to be removed, any sub-surface structures underneath any street. Such structures shall be replaced as soon as practicable, either in the same position as before or in a secure and convenient position underneath such street or underneath such other street, as may be approved by the head of the agency of the city having jurisdiction thereof. This section shall not authorize the permanent removal from any street of any subways or conduits for the reception of electrical conductors which shall have been placed in such street prior to the construction of the railroad, without the consent of the owner and lessee of such subway or conduit.

c. All such removals and restorations shall be made at the proper cost and charge of such person as may have made such removals, but subject to the provisions of his contract, if any, with the board of transportation or one of its predecessors. For the purpose of facilitating construction, and to diminish the period of occupancy of any street for the transportation of material, any contractor acting under a contract made in pursuance of this chapter, with the approval of the board of transportation, may lay upon or over the surface of any street, temporary tramways, to be used only for the removal of excavated materials or the transportation of materials for use in such construction. Any such tramway shall be removed forthwith upon the direction of the board of transportation. This section shall not authorize the construction or operation of any street railroad or grant to any person the right to lay down railroad tracks.

ARTICLE IV
**CONSTRUCTION AND OPERATION BY THE BOARD
OF TRANSPORTATION**

- Section 30. General powers of board of transportation.
- 31. Municipal construction of railroads.
 - 32. Maintenance and operation by the board of transportation.
 - 33. Acquisition of railroads or interests therein.
 - 33-a. Lease by the city of railroad.
 - 34. Issue of bonds by city.
 - 35. Vehicular tunnels and other means of transportation.
 - 36. Rates of fare.
 - 36-a. Municipal operation; deficiencies.
 - 37. Municipal operation; revenue and accounts; operating and other funds.
 - 38. (No catch line)

§ 30. General powers of board of transportation. The board of transportation is empowered to operate any railroad acquired, owned, constructed, or provided by such city in accordance with the provisions of law. The board of transportation shall also be empowered to purchase all necessary materials and supplies for such operation and maintenance, and, generally, to exercise all requisite and necessary authority to manage and direct the operation and maintenance of such road for the convenience and safety of the public, provided, however, that, except as otherwise provided in section seventeen of this chapter, any contract for the purchase of such materials and supplies or work or labor to be performed, the estimated cost of which exceeds the sum of twenty-five hundred dollars shall be made by the said board only upon public letting founded on sealed bids, except in a case where the board, by resolution, declares the existence of an emergency or the existence of other circumstances making competitive bidding impracticable. Notice of the invitation for such bidding stating the date and place of the receipt and opening of bids shall be published in the city record in five successive issues immediately preceding such opening. The board may reject all such bids and readvertise for new bids if it shall deem it for the public interest so to do; if not, it shall award the contract to

the lowest responsible bidder unless the board, by unanimous vote, shall determine that it is for the public interest that a bid other than that of the lowest responsible bidder shall be accepted.

§ 31. Municipal construction of railroads. It shall be the duty of the board of transportation to consider the routes, plans and specifications, if any, previously laid out and adopted by them or their predecessors, and for which the consents have been obtained referred to in section twenty-one of this chapter; and either to proceed with the construction of such railroad, and provide for the operation thereof, or to change and modify such routes, plans or specifications in such particulars as to such board may seem to be desirable, or from time to time and with or without reference to former routes or plans to adopt other or different or additional routes, plans and specifications for such railroad. In all cases in which any such change or modification shall be of such character as to require the consents thereto referred to in section twenty-one of this chapter and in all cases where other or different routes or general plans may have been so adopted, the board of transportation shall proceed to secure the consents required to be obtained by section twenty-one of this chapter. Prior to the time of the final grant of any franchise under the provisions of this chapter or the making of a contract for construction of any railroad under the provisions of this chapter, the board of transportation shall have power to rescind and revoke any resolution of such board or its predecessors adopting any routes or general plan for a railroad adopted by such board or its predecessors and, in the discretion of such board, in lieu thereof to adopt new routes and a general plan. Every such rescindment or revocation which shall have been made by such board of transportation or its predecessors shall be deemed to have been lawful and authorized by the rapid transit act, as the same was in effect on the twenty-third day of April, nineteen hundred.

b. As soon as such consents, where necessary, shall have been obtained for any railroad and the detailed plans and specifications have been prepared as provided in section twenty-two of this chapter, such board of transportation, for and in behalf of such city, may enter into a

contract with any person, which in the opinion of such board shall be best qualified to fulfill and carry out such contract for the construction of such road, including such sub-surface structures as such board may include in the plans for such road under the authority of section twenty-two of this chapter, upon the routes and in accordance with the plans and specifications so adopted, for such sum of money, to be raised and paid out of the treasury of such city, as provided by this chapter, or to be contributed in part or in whole for the construction of such road by the contractor having the contract for the equipment and operation of such road as a consideration for the making of such contract for equipment and operation as provided by this chapter. Such contract for construction shall contain such terms and conditions, not inconsistent with the aforesaid plans and specifications, as such board shall determine to be best for the public interests. The sum of money to be paid for the construction of such road shall be separately stated in the contract from the sum to be paid for any sub-surface structures, the construction of which is provided for in such contract. Such board, in any case, may contract for the construction of the whole road, or all the roads provided for by such plans in a single contract, or, by separate contracts, executed from time to time, or at the same time, with one or more such persons, may provide for the construction of a part of such road or for the construction at first of two or more tracks over a part of such road and afterwards of one or more additional tracks over a part of such road as the necessities of such city and the increase of its population or the advantageous and economical performance of the work in the judgment of such board may require. In the alternative such board, in its discretion by separate contracts executed from time to time or at the same time, may contract with one or more persons for the performance of any kind of work or any portion of the work or for the furnishing of any material or for the performance of any labor necessary for or incidental to the construction of such road. In any case where any such contract which shall have been entered into provides that upon the happening of any event or default specified in such contract such board shall have the right and be entitled to take over and perform or complete or contract for the performance or completion of the work embraced in such contract or any part of such work, such board, upon the happening of any such event or default so

specified in such contract, with the approval of the board of estimate and the mayor, also may employ such persons and purchase or hire such plant, tools, machinery, supplies and materials as may be necessary, and itself perform or complete the work embraced in such contract or any part of such work as in its judgment the public interests require.

c. The board of transportation, in the contract for a part of any such railroad, also may insert a provision that at a future time, upon the requirement of the board, the contractor shall construct the remainder or any part of the remainder of such road, as the growth of population or the interests of the city, in the judgment of the board, may require. Such board may insert in such contract provision for a method for fixing and ascertaining at such future time the amount to be paid to the contractor for such additional construction, and to the end of such ascertainment may provide for arbitration or for determination by court of the amount of such compensation, or of any other details of construction which shall not be prescribed in the contract, but which shall be deemed necessary or convenient by such board. If the public interest, in the opinion of the board, shall justify the provision, any such contract may provide that the construction of any section or portion of the railroad included in such contract, with the consent of such board, may be suspended during the term of operation of the railroad as provided in this section, or any part of such term. During such term or part of term there shall be available for use, in lieu of such portion of the road, a railroad or a portion or section thereof, which, with the railroad or portion of railroad constructed under such contract, shall form a continuous and convenient route.

d. Any such contract may be made for the construction of such road in sections, or for the construction of any section thereof. Except as otherwise provided in this chapter, every such contract shall specify when the construction of the railroad or the section thereof included therein shall be commenced in each case, and, in each case, the date of completion. The board of transportation may by any such contract determine when and how the work of construction of the railroad included therein shall proceed. The board may also provide for the equipment at public expense of such railroad in connection with the construction

thereof, and may include in any contract for construction authorized by this chapter provision for the equipment, or any part thereof, of such railroad, but may make a separate contract for the whole or any part of such equipment with the constructing contractor or any other responsible persons. Any such contract, in lieu of requiring the contractor to provide equipment or any part thereof for generation or furnishing of motive power, may authorize the contractor to enter into a subcontract for purchase and delivery as required of motive power for operation of such railroad, provided such subcontract, as to the parties thereto, the sureties thereon and the terms thereof, shall be first approved by the board. In the alternative such contract may provide that the construction or completion of equipment, or any portion thereof, for generation or furnishing of motive power included in such contract, with the consent of the board, may be suspended during a period designated, provided that during such period there shall be available for use when required, in lieu of such equipment, motive power furnished to the contractor under and pursuant to the terms of a contract for the purchase of power, which contract shall, as to the parties thereto, the sureties thereon and the terms thereof, be first approved by the board. In case of the expiration or termination, of the contract for equipment, maintenance and operation of such road, as provided in this chapter, any subcontract for the furnishing of power may be terminated or taken over by the city without making any allowance or paying any amount to the contractor for or on account of any unexpired term of such subcontract.

e. Any railroad constructed by and at the expense of the city shall be and remain the absolute property of the city, and shall be and be deemed to be a part of the public streets of the city, to be used and enjoyed by the public subject to such reasonable rules and regulations as may be imposed and provided for by the board of transportation.

§ 32. Maintenance and operation by the board of transportation. a. If in the opinion of the board of estimate and the mayor, or in the opinion of the board of transportation, either a contract for equipment, maintenance and operation, or a contract for maintenance and operation as provided in this chapter would be inexpedient, impracticable or

prejudicial to the public interest, the board of transportation shall devise and prepare a plan for the maintenance and operation by the board of transportation of any railroad which such city owns or is empowered to acquire or operate by virtue of any law, and any combination of city-owned railroads, or devise and prepare a plan for leasing under a contract the use of the tracks of any railroad for operation of cars thereon during a term of not more than five years for the carrying of passengers and property by one or more persons owning or operating any railroad in the city, or organized for the purpose of operating cars as aforesaid over or upon any such railroad, and when such plan shall have been approved by the board of estimate and the mayor, the board of transportation shall either maintain and operate such road for and on behalf of the city, or allow the use of the tracks of such railroad for the operation of cars for the transportation of persons or property by any such person. The compensation to be made or the rates of fare provided for shall be stated by such board of transportation in any operating contract or plan aforesaid. Whenever it shall seem practicable to reduce rates of fare, the reduction shall in the first instance be in favor of school children, and then, next in order, in favor of all the public between six and nine o'clock ante meridian, and between four and seven o'clock post meridian, and then for all the public from five o'clock ante meridian until seven o'clock post meridian, and, lastly, for all the public at all times.

b. No part of any road, or of its structures and appurtenances, constructed under the authority of this chapter, shall be used for advertising purposes or for any trade, traffic or occupation, other than required for the operation of such road, except such advertising and such sale of newspapers, periodicals, magazines, books, flowers, confectionery and other similar articles usually sold in railway stations, as from time to time, always with the right of revocation, may be permitted by the board of transportation. Such board, however, may authorize the installation, maintenance and operation of telephones in the stations of such road for public use. Such board of transportation may authorize or enter into a contract for the granting and exercise of such privileges for such period of years and upon such terms and conditions as, in the judgment of such board, the public interests

require.

§ 33. Acquisition of railroads or interests therein. a. The board of transportation, with the approval of the board of estimate and the mayor, may purchase, or acquire an option to purchase from time to time, for such price and upon such terms and conditions as may be agreed upon, and acquire by conveyance or grant to such city, to be delivered to such board of transportation, any line of railroad, or part of any such line and/or equipment therefor already constructed or provided or in process of construction or provision, of the character which might be constructed or provided as a railroad and/or equipment under the provisions of this chapter, and which in the opinion of the board of transportation it is for the interest of the public and the city to acquire for rapid transit purposes. The payment for such line of railroad, or a part thereof, and equipment may be made out of funds made available pursuant to the local finance law, or by the application of revenues derived from the operation of any such line alone or in conjunction with other railroads owned by such city, or the payment may be made partly by one method and partly by the other method as the board of transportation, with the approval of the board of estimate and the mayor, shall determine. The moneys necessary to be paid for any such railroad and equipment purchased, together with all expenses necessarily incurred in connection therewith shall be raised through the application of revenues from operation as above provided or shall be raised pursuant to the local finance law. The method of payment for the line to be purchased shall be described and specified in a form of proposed contract for purchase and sale which shall be submitted for approval to the board of estimate and the mayor by the board of transportation. The form of proposed contract may incorporate such terms and conditions as provide for a deferred payment of the agreed purchase price. Any such railroad or equipment acquired in accordance with the provisions of this section, and any railroad acquired in accordance with the provisions of article eight of this chapter or former article seven of the public service law, shall be deemed to have been constructed or provided for at the expense of the city within the meaning of this chapter and the cost of acquisition thereof shall be deemed and considered as the cost of

such construction or provision, in like manner as though such railroad or equipment had been constructed or provided pursuant to the provisions of this chapter.

b. Unless all the consents to the construction and operation of any such railroad so purchased required by article three, section seventeen, of the constitution shall have been obtained prior to such purchase, the board of transportation shall proceed to secure such consents as required by section twenty-one of this chapter. As soon as such consents shall have been obtained, the board of transportation for and on behalf of the city, with the approval of the board of estimate and the mayor, may enter into a contract with any person for the equipment, in whole or in part, at the cost and expense of such person, and for the maintenance and operation of any such railroad so purchased, either alone or in conjunction with other railroads then owned or thereafter constructed or acquired by such city, for a term of years to be specified in the contract, not to exceed twenty-five years. Such contract may contain a covenant for one renewal of not to exceed twenty-five years, unless the purchase price or some part thereof is to be paid out of the revenues as provided in subdivision a of this section, in which event such contract may be for a longer period than twenty-five years but shall provide for its termination by such city, at its option, on one year's notice given at any time or after the expiration of any specified period not exceeding ten years, upon the payment by or for such city of the amount of any balance of such purchase price then remaining unpaid and the unamortized portion of the cost and expense of any equipment constructed or provided at the cost of such person after the date of such contract. Any such contract providing for the payment of the purchase price of any such railroad or equipment wholly or in part out of the revenues shall provide for the application of revenues derived from the use or operation of the railroads included therein and the order of priority of such application. Such contract shall provide for the payment out of such revenues of current annual interest charges at a rate of not exceeding six per cent per annum, and current annual amortization charges at a rate to be specified, on the amount of the balance of the purchase price remaining unpaid, of such railroad or equipment so purchased by such city, and on the actual cost of any equipment,

constructed or provided by such person after the date of such contract. Every such contract shall contain such terms and conditions as to the rates of fares to be charged and the character of services to be furnished and the rental to be paid, or the terms upon which such railroads are to be operated, as the board of transportation shall deem to be best suited to the public interests and as the board of estimate and the mayor shall approve. Any domestic railroad corporation owning any line of railroad which the city is authorized by this section to purchase and acquire as above provided, with the consent of the holders of record of at least two-thirds of its outstanding shares of capital stock entitled to vote thereon, given as provided in section one hundred forty-eight of the railroad law, may transfer and convey to such city such railroad and equipment or any part thereof, and the devices and appurtenances and franchises thereof or used in connection therewith, subject, however, to the rights of appraisal of the shares of any dissenting stockholder as provided in section one hundred sixty-one of the railroad law.

c. If a contract has been made for equipment, in whole or in part, maintenance and operation of a railroad constructed or to be constructed by the city and owned by the city upon any route established and consented to as provided in this chapter, which contract provides for construction by the city and equipment, maintenance and operation by the contractor of branches and extensions of such railroad and additional lines also to be owned by the city upon terms and conditions as provided in such contract, the board of transportation in lieu of constructing a branch or extension or an additional line with the consent of the board of estimate and of the mayor may acquire by conveyance or grant to such city to be delivered to such board of transportation the right to connect such railroad with and to operate within the city over any track of a railroad already constructed or in process of construction and which right in the opinion of the board of transportation it is for the interest of the public and the city to acquire for rapid transit purposes in lieu of constructing such branch, extension or such additional lines. The grant shall contain such terms and conditions as to the compensation to be paid for such right, the term during which it shall be enjoyed, which with any renewal shall not be more than

twenty-five years, and such other terms and conditions to effectuate the purpose of the grant, including the right of revocation upon terms and conditions to be specified in such grant, as the board of transportation shall deem best suited to the public interest and the board of estimate and the mayor shall approve.

§ 33-a. Lease by the city of railroad. 1. Such city may lease from any railroad corporation any railroad or steam surface railroad located wholly within one county in such city, or may lease from any railroad corporation any part of any railroad or steam surface railroad within one county in such city substantially all of the lines of which are located wholly within one county in such city, for a term not exceeding ten years, with the right of renewal not to exceed ten additional years, upon such terms and conditions as to annual compensation to be paid by such city for such lease and such other terms and conditions as the board of estimate shall deem best suited in the public interest. Payment for such lease may be made out of moneys raised by taxation or out of any proceeds arising out of the sale or lease of real property acquired by such city for rapid transit purposes.

2. The board of estimate may by contract provide for the maintenance and operation of such leased railroad, steam surface railroad or part thereof by any railroad corporation which in the opinion of such board shall be best qualified to fulfill and carry out such contract. Such contract shall contain such terms and conditions as the board of estimate shall deem best suited in the public interest.

3. Notwithstanding any other provisions of law, such railroad corporation operating such leased railroad, steam surface railroad or part thereof shall be subject to the jurisdiction, regulatory powers and supervision of the public service commission.

§ 34. Issue of bonds by city. a. For the purpose of providing the necessary means for such construction, or equipment, or both, as the case may be, or acquiring by purchase, at the public expense, of any

such road or subsurface structures, and the necessary means to pay for property rights which shall be acquired by the city for the purposes of the construction or the operation of any such road as provided in this chapter, and the necessary means to pay awards made as provided in this chapter for damages for change of grade on any street and to pay the expenses of proceedings to determine such damages, and of meeting the interest on obligations, issued for the purposes of this section, accruing thereon prior to the completion and readiness for operation of the portion of such road, and such sub-surface structures, for the purchase, construction, or equipment of which such obligations shall have been respectively issued, the mayor, from time to time, as the same shall be necessary, upon the requisition of the board of transportation, shall make available such sums as may be necessary, upon vouchers certified by the board of transportation. In case any person shall claim to be entitled to any money on account of a contract entered into under the terms of this chapter, for the construction of any part of a municipal railroad and the board of transportation shall fail, neglect or refuse to certify a proper or sufficient voucher for the payment of the money so claimed, a proper or sufficient voucher shall not be a condition precedent to the liability of the city, but an action may be brought directly against the city for the recovery of such money as such person may be entitled to. This section shall not affect the powers of the board or its engineers, as set forth in this chapter or as they may be prescribed in any contract entered into pursuant thereto, or to change or alter in any respect the existing rules of law as to the force or effect of any certificate which shall have been or may hereafter be made under any contract. This section shall be deemed to apply also to any such actions instituted before May sixth, nineteen hundred twenty-one. If bonds are issued by the city for the purposes of this section they may be made payable out of a sinking fund to be established and created out of the annual rentals or revenues of such road, including sub-surface structures, as provided in this chapter. In case the board shall request the mayor to have any part of the work of restoration of street surfaces or property incidental to the construction of any such road performed by or under the direction of any head of an agency of such city or any subdivision of such city, the mayor may set apart out of any appropriation theretofore made under the

foregoing provisions of this section such amount as the board of transportation may specify and shall make such amount available for the use of such head of such agency for the purposes of such restoration of street surfaces or property.

b. A contract for the construction of such road shall not be made unless and until the mayor shall have consented thereto and prescribed a limit to the amount of funds available for the purposes of this section which shall be sufficient to meet the requirements of such contract in addition to all obligations theretofore incurred and to be satisfied from such funds. The board of transportation of the city of New York, in its discretion, may request the mayor to make available either such amounts from time to time as it shall deem the progress of the work to require, or the full amount sufficient to pay the entire estimated expenses of executing any contract made pursuant to this chapter. The certificate of the comptroller, mentioned in section 93c-3.0 of the administrative code of the city of New York shall not be necessary to make any such contract binding on the city. Before finally fixing the terms and conditions of any contract for any of the purposes contained and set forth in this chapter, the board of transportation may set a date or dates for a public hearing upon the proposed terms and conditions thereof, at which citizens shall be entitled to appear and be heard. No such hearing shall be held, however, until notice thereof shall have been published for at least two weeks immediately prior thereto in the city record, or other official publication of the city, and at least twice in two daily newspapers published in the city. In any case where such a public hearing has been scheduled, it shall be the duty of the board of transportation to cause as many copies of a draft of the proposed contract to be printed at least two weeks in advance of such hearing as may be necessary. Such notice of such public hearing shall state where copies of such drafts may be obtained upon payment of a fee, to be fixed by such board, but not to exceed one dollar for each copy. The board, after the hearing to be held as above required, may alter, modify or amend such draft contract in any manner in its discretion.

c. A railroad owned or to be owned by the city, and for the

construction of which with public money in whole or in part a contract was or is authorized by this chapter to be entered into as aforesaid, shall be a local improvement the cost of which railroad may be met in whole or in part by assessment on the property benefited. The board, with the approval of the board of estimate and of the mayor, shall have power to determine whether all or any, and if any, what portion of the cost and expense necessary to be incurred for any such road shall be assessed upon property benefited thereby, and whether all or any, and if any, what portion of the cost and expense necessary to be incurred, or which shall have been already necessarily incurred, for the acquisition of any property for the construction or operation of such railroad shall be assessed upon property benefited by such railroad. An assessment upon the property so benefited may be laid, confirmed, enforced and collected in accordance with such determination and pursuant to the provisions of the charter, administrative code of such city and other laws respecting assessments for local improvements in such city.

d. At any time after the consents have been obtained for any such railroad and the detailed plans and specifications therefor have been prepared as authorized and directed by this chapter, the board may certify and transmit to such board of estimate an estimate of the cost and expense necessary to be incurred for the construction of such railroad, and for the acquisition of any property, including equipment other than rolling stock, that shall be necessary either for the construction or the operation of such railroad, or from time to time an estimate of the cost and expense necessary to be incurred or a statement of the cost and expense which has been necessarily incurred for the acquisition of any property for the construction or operation of such railroad. With such estimate or statement the board of transportation shall transmit a statement which shall show:

1. The proportion of such cost and expense, together with the amount thereof in money, which should be assessed upon the property benefited;

2. The boundaries of the district in such city upon which an assessment aggregating such amount should in the opinion of the board be levied, and

3. The amount so to be levied in every such district.

Thereupon the board with the approval of the board of estimate and of the mayor, shall have power to, and, if in their judgment the interests of the public so require, after publishing a notice at least one week in advance in the City Record and in such other newspapers published in such city as such board of estimate with the approval of the mayor, shall designate as sufficient, stating the time, place and subjects to be considered, and after a joint hearing, pursuant to such notice by and before the board of transportation and the board of estimate, which may be adjourned from time to time, in accordance with the charter, code, and laws aforesaid, they shall fix and determine the boundaries of the district upon which such assessment shall be levied, the whole amount or proportion of any such cost and expense to be assessed upon property benefited by such improvement, and the amount or proportion of such whole assessment to be levied in such district benefited by such improvement, and take such other and further proceedings as shall be necessary to levy and collect such assessment. Such decision of the board of transportation so approved by the board of estimate and the mayor, shall be final as to each matter so fixed and determined and shall not be subject to review.

e. The board of estimate, with the approval of the mayor, shall certify to the board of assessors of such city the amount of such cost and expense so directed to be assessed upon property benefited in each such district. Such board of assessors shall thereupon proceed forthwith to levy and assess such amount upon the real property within the district benefited thereby in proportion to the amount of such benefit and shall not be limited in the levying of such assessment to one-half of the fair value of any house or lot or improved or unimproved land. Such assessment when laid shall be subject to, and protected by, all provisions of the charter and administrative code of such city applicable to assessments for local improvements levied pursuant to such charter and code.

f. An assessment levied against any property in accordance with this section shall be payable as follows, namely: one-tenth thereof within

sixty days from the date of the confirmation and entry of each assessment and the remainder of such assessment in nine installments as nearly equal in amount as may be with interest thereon from the date of entry and confirmation at the rate of six per centum per annum in one, two, three, four, five, six, seven, eight and nine years respectively thereafter, but all installments not due may be paid at any time with interest to the date of payment. If any installment and interest thereon be not paid within three years after it shall become due and payable the entire assessment less such part thereof as shall have been already paid, shall become due and payable and must be immediately collected, or the tax lien therefor sold or enforced in the same manner as other delinquent assessments are required to be collected by the charter, administrative code and other laws of such city.

g. Obligations of the city issued in advance of the collection of such assessments shall be payable out of the rapid transit construction fund as hereinafter directed to be constituted. They shall be a legal investment for the sinking funds of such city and for trustees and other fiduciaries charged with the investment of trust funds.

h. All moneys derived from the sale of such obligations, and all moneys derived from the collection of such assessments shall be kept separate and apart from all other funds of the city and shall be known as the rapid transit construction fund of such railroad. Unless the assessment be made separately for the cost and expense of acquisition of property as aforesaid, they shall be applied only to the following uses and, among such uses, only in the following order as nearly as may be:

1. To the cost and expenses of the construction of such railroad and the acquisition of property necessary for such construction, including equipment other than rolling stock;

2. To the acquisition of real property necessary for the operation thereof;

3. To the retirement of the obligations therefor.

In case an assessment is made separately for the cost and expense incurred or to be incurred for the acquisition of any property for the construction or operation of any such railroad, the money derived from the sale of such obligations, and all moneys derived from the collection of such assessment shall be applied only to pay or reimburse the cost and expense of acquisition of the property for which such assessment was made or to the retirement of the obligations issued in advance of the collection of such assessment.

i. In case of default in the payment of any installment of interest or principal of any such obligations the holder thereof may require, if necessary, by peremptory order of mandamus, any tax lien of such city for the amount of any assessment upon the property benefited which is then due and payable, to be immediately sold or enforced in accordance with the charter, administrative code and other laws of such city. If at such time the tax lien so sold shall include, in addition to the lien of the assessment aforesaid, any lien for delinquent taxes or other lienable charges due to the city, and if it shall become necessary to reduce the amount of the tax lien pursuant to such charter, code and laws of such city, the lien shall not be reduced so as to make it less in value than the amount of the assessment aforesaid with the interest thereon. Notwithstanding any reduction as aforesaid, the proceeds of the sale of such a lien, to the extent of the full amount of the assessment and interest, shall be paid into the rapid transit construction fund of the railroad aforesaid, and the balance, if any, shall be applied as proceeds of the rest of the tax lien.

j. If any assessment shall be reduced for fraud, substantial error or other reason, the cost and expense aforesaid may be reassessed, and the reassessment shall stand as security for the obligations aforesaid to the same degree and in the same manner as if it had been an original assessment. In case any assessment is reduced below its original amount, however, either the amount to be expended in constructing the railroad aforesaid and for acquisition of property necessary for construction and operation thereof as aforesaid, or to be expended for acquisition of property, if the assessment reduced is for cost and expense thereof separately, shall be correspondingly reduced or else the difference

between the original assessment and the reassessment shall be paid by the city into the rapid transit construction fund of the railroad aforesaid, either from current revenue or from sums to be made available as the board of estimate shall determine.

k. If the cost and expenses of construction of any such railroad and for acquisition of property necessary for construction and operation thereof as aforesaid shall be only partially assessed as aforesaid upon the property benefited, no provisions in any contract for the construction thereof shall become operative until the board of estimate and the mayor shall have consented thereto and shall have prescribed a limit to the amount of city funds if any, available for the purpose of such contract as hereinbefore provided. No provisions in any contract for the construction of any railroad which construction is to be paid for wholly or partly by means of local assessments shall become operative until the board of estimate shall have levied an assessment to provide for the construction thereof, and until either assessments shall have been paid in, or obligations issued in advance of the collection of such assessments, shall have been sold in sufficient amounts when paid for, to cover the cost and expense payable from assessments levied as aforesaid and until the board of estimate and the mayor shall have consented to such a contract.

l. In a case where the moneys collected pursuant to such an assessment shall be insufficient to discharge the obligations so issued as aforesaid, or if the amount arising on the sale of such obligations is insufficient to pay the expenses incurred for the construction of such railroad and for acquisition of property necessary for construction and operation thereof as aforesaid, or incurred for acquisition of property, if the assessment is for cost and expense thereof separately, the deficiency up to an amount not in excess of ten per centum of the total amount of the assessment shall be paid by such city into the rapid transit construction fund, either from current revenue or from sums made available as the board of estimate and the mayor shall determine.

§ 35. Vehicular tunnels and other means of transportation. a.

Notwithstanding any provisions to the contrary contained in any city charter, administrative code, or in any general, special or local law, the board of transportation may act as the agent of any such city, at the request of the mayor thereof, to prepare and submit to such mayor a plan for the building and construction of a tunnel under any stream or waterway within or adjoining the limits of such city and the approaches thereto, or a vehicular tunnel or two or more vehicular tunnels, together with the necessary approaches thereto, between the several boroughs of the city of New York, or between two points in the same borough, and as such agent of such city, with like request and approval, may proceed with the construction and equipment or enter into contracts for the construction and equipment of such part or section of any such tunnel as such mayor shall require. The advertising and award of any and all contracts entered into pursuant to this section shall be subject to the provisions of section seventeen of this chapter. The city, from time to time, on requisition duly made by the board of transportation, may appropriate such sums of money as it may deem requisite and necessary to enable the board of transportation to prepare such plans or to carry on such construction and equipment. Such sums shall be paid out and expended for such purposes upon vouchers certified by such board of transportation. If bonds are issued for such purposes, they may be made payable at maturity out of a sinking fund to be established and created out of the rates and charges fixed by the board of estimate for the use of any such tunnel by pedestrians and vehicles. Upon the completion thereof the commissioner of public works or other like officer of such city shall have cognizance and control of the management, maintenance, operation and repair of every such tunnel and the approaches thereto.

b. The board of transportation, with like request and approval of the mayor, may conduct such hearings and investigations with respect to streets, tunnels or other ways, railroads, ferries or other methods or means for the transportation of passengers or property within the limits of any such city as such mayor shall require, and make reports and recommendations with respect thereto, from time to time, as shall likewise be required.

§ 36. Rates of fare. The board of transportation, with the approval of the mayor, is hereby empowered to fix and adjust from time to time the rate of fare that may be charged any passenger traveling on any railroad publicly or municipally operated pursuant to the authority of this chapter, provided, however, that any change in such rate of fare shall become effective on the first day of the next ensuing fiscal year of the city.

§ 36-a. Municipal operation; deficiencies. If the board of transportation shall undertake or engage in public or municipal operation of any railroad pursuant to the authority of this chapter, the city shall provide for the payment of any expenses of operation, maintenance, interest, principal payments on indebtedness, contribution to sinking funds, and reserves on account of depreciation, to the extent and in the amount not provided for by the revenues derived from such operation. For such purposes such city shall, with respect to any such expenses heretofore or hereafter not provided for by revenues derived from operation, use money raised by taxation. Nothing in this section contained shall be construed to imply that the powers herein defined have not heretofore been vested in such city by law.

§ 37. Municipal operation; revenue and accounts; operating and other funds. a. The aggregate amount of the gross receipts of moneys derived directly or indirectly from or in connection with the operation by the city of any road shall be known as the revenue thereof. Such revenue shall be derived from fares to be charged persons riding thereon; from rates to be charged for carrying property thereon; from rentals or fees to be charged for concessions or privileges thereon in connection therewith; from the sale of surplus power, and any other receipts from whatever source derived.

b. The board of transportation shall establish and maintain a system of accounts to show at all times the cost of the several classes of property used in operation and the sources of funds used in the acquisition of such property; the several classes of operating revenue

and other income; maintenance expenses; interest, amortization, depreciation and all other charges against earnings. Such accounts shall be kept in accordance with the uniform system of accounts prescribed for railroads by the public service commission or other duly constituted authority and published in the City Record.

c. The revenue derived from all sources of income of any such road shall be deposited daily by the board in the name of the city in banks to be designated by the board of transportation and shall be held separate and apart from all other funds of the city as the operating fund for the payment therefrom of the expenses of operation, maintenance and repairs, and depreciation, interest and amortization charges. An accurate report of all moneys received shall be made daily to the comptroller of the city, who shall have power and whose duty it shall be to audit currently all the financial details of municipal operation, which audit shall not preclude examination of such account by any other properly constituted authority. An itemized report of the result of such municipal operation shall be filed each month by the board of transportation with the mayor and the board of estimate.

d. From the operating fund thus derived there shall be deducted the following charges in the order named and a separate accounting be made of each:

1. Operating expenses, exclusive of maintenance, including all expenses for personal service, materials and supplies used in operation.

2. Expense of maintenance and repairs of structures and equipment, which shall be the actual cost of keeping the structures and equipment in thoroughly good order and repair, and shall include the replacement of parts of construction and parts of equipment units, but shall not include the renewal or replacement of any complete units of property, as such units are defined and specified from time to time by the board of transportation for renewal or replacement from the capital reserve fund.

3. The amount of interest actually payable by the city and the proportionate annual contributions to sinking fund or other funds to

amortize and retire the bonds, corporate stock or other evidence of indebtedness issued by the city on account of any road.

4. Contributions to a depreciation fund for replacement or renewal of worn-out, obsolete or inadequate units of structures or equipment, of the amount the board of transportation shall determine is the estimated net loss of value, after maintenance has been applied, of such complete units of property, with due provision for obsolescence or inadequacy of such units.

e. The deduction for expenses of operation and maintenance shall be made currently as required, and the deductions for depreciation, interest and amortization installments shall be made after the close of operations each month and shall be the monthly proportion of the annual amount required for such purposes.

f. In addition to the principal operating fund in which all the revenue shall be deposited as above provided, there shall be established and maintained in the custody of the comptroller a separate fund and bank account, to be designated as the capital reserve fund, to which shall actually be transferred the amounts deducted from revenue on account of interest, amortization and depreciation. Any surplus or balance which shall accrue from the revenue at the end of the fiscal year, in excess of an amount equal to the average cost of operation and maintenance for one month during such fiscal year, shall also be paid into such capital reserve fund. Such fund shall be available for disbursement in the same manner as the principal operating fund for the following purposes in the order specified:

1. Interest payable by the city on account of bonds or other evidences of indebtedness issued, and contributions to sinking funds established for the retirement thereof;

2. Amounts necessary for renewals or replacements on account of depreciation and obsolescence.

Any surplus accruing in the capital reserve fund over and above the amounts disbursed for the purposes specified shall be retained in such

fund and may be expended only for the support, installation or extension of such transportation facilities. All interest earnings of such fund shall be added to the fund. The comptroller shall make all payments out of the capital reserve fund, and shall report quarterly to the board of estimate the condition of the fund, itemized as to the amount on hand for interest, amortization of bonds or other evidences of indebtedness, depreciation and surplus, and shall keep the account of the fund so subdivided.

g. Payments or withdrawals of moneys from the operating fund and the capital reserve fund shall be made by checks drawn and signed by the comptroller upon vouchers certified by a member or an officer of the board of transportation, duly authorized by resolution of such board, except that payments of interest, contributions to sinking funds and on account of retirement of bonds or other evidences of indebtedness shall be made by the comptroller upon his own initiative as such payments become due and payable, but a memorandum of such payments shall be transmitted by the comptroller to the board of transportation for entry in the accounts thereof. The comptroller from time to time shall inform the board of transportation in writing as to the amount to be periodically deducted from revenue on account of interest and amortization requirements, and the monthly charges and vouchers for such amounts shall be made in accordance with such devices.

§ 38. Notwithstanding any other provision of law, the board of estimate or other analogous local authority of any such city is authorized to issue evidences of indebtedness to be known as budget notes in an aggregate amount not to exceed nineteen million dollars, for the purpose of providing funds for the payment of any deficit of revenues derived from operation of any railroad owned and operated by such city, arising out of any adjustments in the salaries or compensation of officers and employees of any such railroad during the fiscal year ending on the thirtieth day of June, nineteen hundred forty-seven. Such budget notes shall be redeemed in three equal installments from appropriations to be included in the annual expense budgets of such city for the fiscal years nineteen hundred forty-seven--nineteen hundred forty-eight, nineteen hundred

forty-eight--nineteen hundred forty-nine and nineteen hundred
forty-nine--nineteen hundred fifty.

ARTICLE V

PRIVATE CONSTRUCTION, EQUIPMENT, MAINTENANCE OR OPERATION OF RAILROADS

Section 40. Contract for equipment, maintenance and operation.

41. Contract for maintenance and operation.

42. Contract for construction or operation.

43. Persons with whom contracts may be made.

44. Modification of and changes in contracts.

45. Extensions and additional lines.

46. Franchise for private construction, maintenance and
operation.

§ 40. Contract for equipment, maintenance and operation. a. Subject to the approval of the board of estimate and of the mayor, the board of transportation shall have full power and authority to provide for the maintenance, supervision, care and operation of any railroad and also of the subsurface structures and all other devices and appurtenances, constructed or to be constructed for and at the expense of such city pursuant to the provisions of this chapter. With like approval, such board of transportation may enter into a contract with any person, who in the opinion of such board shall be best qualified to fulfill and carry out such contract, for the equipment, or any part thereof not provided for pursuant to section thirty-one of this chapter, of a railroad, at his own cost and expense, and for the maintenance and operation of such road for a term of years to be specified in such contract and not to exceed twenty years. In lieu of such definite term of twenty years the contract may be for a longer period to be fixed therein and in such case it shall provide that the city upon giving a specified notice shall have the right to terminate the contract for the equipment, maintenance and operation of such road as to all and if deemed advisable as to any specified portion thereof at any time after the expiration of ten years from the date when operation of any part of

such road or of such specified portion thereof shall actually begin, but such right of termination shall be upon condition as follows:

1. If the title to the equipment of such railroad shall not be vested in the city then that the equipment of such railroad or portion thereof suitable to and used for purposes of such contract shall be purchased and taken by the city at an amount which shall be ascertained as provided in the contract, but which shall not be greater than the actual cost thereof, plus fifteen per centum thereof. Such equipment shall upon such termination of such contract become and be the property of the city on paying to the contractor such amount, or in case the title to the equipment of such railroad shall be vested in the city then that the city shall pay to the contractor an amount for his investment in the equipment of such railroad, or portion thereof, which shall not exceed the actual cost to the contractor of the equipment of such railroad or portion thereof, plus fifteen per centum thereof, and shall decrease under the provisions of the contract as the term thereof continues so that at the end of the full term of the contract no such amount shall be paid. If additional equipment shall be required and supplied after the railroad, or portion thereof, shall have been put in operation, and if the contract shall provide that title to such additional equipment shall vest in the city when supplied, then the city shall pay an amount for the investment of the contractor in such additional equipment which amount shall not exceed the actual cost to the contractor of such additional equipment plus fifteen per centum thereof, and shall diminish so that at the end of the full term of the contract the city shall be required to pay for such investment in additional equipment only such amount as shall be provided in such contract, and

2. Upon the further condition if such railroad shall be constructed wholly or in part at the cost of the contractor that the city shall also pay to the contractor an amount for his investment in the construction of such road or portion thereof which shall not exceed the actual cost to the contractor of constructing such road or portion, plus fifteen per centum thereof, and shall decrease under provisions of the contract as the term thereof continues so that at the end of the full term of the contract no such amount shall be paid. If betterments, additions or

improvements shall be required by the board of transportation or approved by such board prior to the construction thereof and be constructed wholly or in part at the cost of the contractor, then that the city shall pay an amount for the investment of the contractor in such betterments, additions or improvements which shall not exceed the actual cost to the contractor of constructing such betterments, additions or improvements plus fifteen per centum thereof and which amount shall diminish so that at the end of the full term of the contract the city shall be required to pay for such investment in betterments, additions or improvements only such amount as shall be provided in the contract.

b. The contract shall provide a method of ascertaining the amount to be paid for such equipment and for such investment of the contractor in the construction of such road upon termination by the city of any such contract and for the equipment of such railroad at the end of the full term of the contract. The contract may provide for determining from time to time in default of agreement by arbitration or by the court a valuation of such investment of the contractor in the construction of such road and of the equipment or any part or portion of either thereof for any purpose under such contract. The contract may provide that the title to the equipment as well as to such road, shall vest in the city from the beginning and that the amount to be paid by the city for the investment of the contractor in such equipment shall decrease as the term of the contract continues, so that at the end of the full term of the contract no amount shall be payable therefore except for additional equipment as aforesaid.

c. The contract shall provide that upon the expiration of a period fixed in the contract, the term of such contract shall end without compensation to the contractor except as provided in the contract, for betterments, additions or improvements to any such railroad required to be made or approved by the board of transportation prior to the construction thereof during the term of any such contract, and, if the title to the equipment be not vested in the city, for equipment suitable to and used for the purposes of such contract to the amount, if any, ascertained as provided in the contract, and that in such event such

equipment shall become the property of the city upon payment to the contractor of such amount or, if the title to the equipment be vested in the city, then an amount for the investment of the contractor in additional equipment for any such railroad to be ascertained as provided in the contract. The contract may also provide that the city in exercising the right so to terminate any contract shall for such compensation as may be reasonable and which shall be determined pursuant to the contract permit the contractor whose contract is so terminated or the assignee or lessor of the contractor to use the tracks, structure and line equipment of a portion of such road when necessary or convenient to reach terminals, yards or other facilities of the contractor or such assignee or lessor then located thereon. The contract may also provide for assuring that in case a new contract under this section for equipment and for maintenance and operation of such railroad is made after such termination pursuant to notice or after the expiration of the full term of the contract that the title to and possession of the equipment so taken and the right to the possession of the railroad so constructed may be transferred directly to the new contractor upon his paying the amount so required.

d. If such contract be made with a railroad corporation organized for the purpose of maintaining and operating a railroad, including the equipment or any part thereof, constructed pursuant to the provisions of this chapter, and which has entered into a contract for the maintenance and operation of a railroad theretofore constructed in whole or in part at the expense of the city as provided in this chapter, and is engaged in the maintenance and operation thereof within such city, and if such contract shall make provision for the equipment, maintenance and operation of such road of the city in connection with such railroad theretofore constructed as aforesaid at the expense of the city, and for a single fare, such corporation and the city may in such contract or by modification of an existing contract provide that the original term of any contract for operation of such railroad theretofore constructed in whole or in part at the expense of the city, may be extended or reduced and any right to a renewal thereof may be abrogated or waived so that such term as extended or reduced shall become and be co-terminous with the term for equipment, maintenance and operation of such road of the

city to be fixed in and by any such contract; and that if the city shall elect to terminate the contract for equipment, maintenance and operation of such road as to any line or portion thereof, which with a connecting line or portion of such railroad theretofore constructed and then operated by such corporation shall make a continuous line, then the city may when so terminating such contract as to any such line or portion thereof, take over such connecting line or portion thereof theretofore constructed in whole or in part at the public expense and then operated by such railroad corporation and terminate the contract of such corporation as to the same, provided that in lieu of such connecting line or portion thereof so taken over such corporation shall for the then unexpired term of the contract for operation of the railroad theretofore constructed have the right to maintain and operate without right of recapture by the city another line of road or portion thereof specified in such contract which with such lines of the railroad theretofore constructed shall make a continuous line. The contract shall in such case provide for adjustment between the city and the corporation of the difference in the value of the right to operate the lines or portions thereof so exchanged by agreement or arbitration or by the court and for payment of such difference between them. The city and the corporation, in such contract, may also provide that if the city, under any provision of law, shall terminate the contract for the maintenance and operation of such road of the city after the expiration of ten years from the date when operation of any part of such road shall actually begin, the city, at any time after thirty-five years from such date, may terminate such contract for the maintenance and operation of the railroad theretofore constructed at the public expense, and take over any such railroad upon payment to such company of a sum not exceeding the then present worth of the unexpired portion of the term of such contract to be ascertained as provided in such contract, which may provide that in default of agreement such sum may be determined by arbitration or by the court.

e. The contract between the city and such corporation may also provide that in consideration of the operation of any such railroad as provided for in such contract and any such railroad theretofore constructed in whole or in part at public expense in connection with each other for a

single fare, and of the payment by such company of moneys to be applied as authorized by this chapter to or toward the construction by the city of the road to be maintained and operated under such contract. In further consideration of any covenants or agreements by the company to modify the term of any of its leases or to waive or modify any of the other provisions of any of its contracts, the gross receipts of the operation of any such railroad theretofore constructed and of such road of the city to be maintained and operated under such contract may be combined during the term of such contract, and that the city shall receive for the use of such additional road at intervals named a specified part or proportion of the income, earnings or profits of the railroads whose receipts are so combined. In such case the contract may apportion out of the amount so to be received by the city and specify a portion thereof which shall be deemed to be the rental for the use of each of the roads of the city maintained, equipped and operated under such contract. Any such contract shall provide for determining the amount of income, earnings or profits of the railroads whose gross earnings are so combined, and for such considerations may authorize the retention by such railroad corporation for each year of the term of such contract, prior to the payment of any sums or of any part or portion of the income, earnings or profits to the city as rental for the use of the roads specified or provided for in such contract, of:

1. A specified sum of money, which sum may represent the average annual income from operation of such railroad theretofore constructed and operated by such corporation for any two or more years;
 2. A sum not exceeding six per centum per annum for each year upon the investment of such company, including brokerage charges not exceeding three per centum, in the construction and equipment of such road of the city to be maintained and operated under such contract; and
 3. A sum not exceeding the annual expense or cost to the contractor plus one per centum per annum on account of the investment of the contractor in betterments or improvements upon or additions to such road and equipment.
- Such contract may also provide that such annual payments shall be

cumulative, and that any deficiency with respect thereto shall be paid off and discharged annually out of such gross receipts before any payments by way of rental or compensation for the use of such roads shall be made to the city.

f. Every such contract shall contain such terms and conditions as to the rates of fare to be charged and the character of services to be furnished and otherwise as the board of transportation shall deem to be best suited to the public interests, and subject to such public supervision and to such conditions, regulations and requirements as may be determined upon by such board, with like approval. In case different parts of a road shall be constructed at different times or at intervals of time, or if the contract shall provide for the use by the contractor of an existing railroad as part of a continuous route as aforesaid, then and in any such case the board of transportation, in its discretion, may prescribe periods for the operation of the different parts of such road so that at one period of time in the future the board may be enabled to make a single operating contract or lease of the entire road. Such board, in its discretion, as one of the terms and conditions of any such contract, may provide that as a consideration for the making of such contract the contractor in addition to any sums to be paid as provided by this chapter by way of rental or otherwise for the use of such road shall contribute a part of the cost of construction of such road which shall be contributed and disbursed by such method, in such manner and at such times as may be provided for in any such contract. Such contribution shall be deemed to be an investment by the contractor in the construction of such road or to be part of the cost to the contractor of constructing such road within the meaning of subdivision a of this section providing for termination of such contract by the city. Any such contract may provide for the construction during the term of such contract of any branches or extensions of such road and the construction of additional lines and for the equipment and operation thereof by the contractor in connection with such road and may make separate provision for apportioning the receipts of such road and of such branches, extensions or additional lines and as to the compensation to be paid to the city for the use of any such branches, extensions or additional lines. The city may enter into a contract for the equipment, maintenance and operation of any such road before any contract for

construction of such road or any portion thereof shall have been made, and in such case the contract may provide that the city may construct or complete such road or additions thereto or betterments thereof from time to time at the expense of the city, or partly at the expense of the city and partly at the cost or through contribution of the contractor as aforesaid in such proportion as may be agreed upon between the city and the contractor. Such contract for the equipment, maintenance and operation of such road or any portion thereof may be made and entered into as provided in this chapter before the consents shall have been obtained for any such road or for any portion thereof as provided in section twenty-one of this chapter, and before the detailed plans and specifications shall have been prepared as provided in section twenty-two of this chapter. In such case such contract for equipment, maintenance and operation of such road or any portion thereof shall be upon condition that such contract shall not become operative or go into effect as to such road or such portion thereof unless and until the city shall acquire the right to construct such road or portion thereof by obtaining such consents. The board of transportation in any contract may reserve the right, upon conditions and for compensation to the contractor, as provided in the contract, to permit other persons and the municipality itself to use the tracks, structure and line equipment of the railroad, or any portions thereof.

g. Every such contract shall further provide that the person so contracting to equip, maintain and operate such road annually or at specified intervals, shall pay into the treasury of such city, such rental for the use of such road, as shall be prescribed therein. The rental may be either a specified sum of money or a specified part or proportion of income, earnings or profits of such road, or both a sum of money and a part or proportion of income, earnings or profits, as such board shall deem best suited to the public interest and the board of estimate and the mayor shall approve. Every such contract may further provide that the amount and character of such rental may be readjusted at the expiration of a prescribed period of not more than twenty years, and be readjusted from time to time in the future at intervals each of not more than twenty years, and may prescribe a method of determining by arbitration or by the court the amount to be paid upon any readjustment

thereof. If such contract be made with a person owning or actually operating or agreeing to operate a railroad wholly or in part within the limits of the city and shall make provision for the equipment, maintenance and operation of such road of the city in connection with such railroad and for a single fare, the contract may provide that the gross receipts from the operation of such railroad within the limits of the city and from the operation of such road of the city may be combined during the term of such contract and that the city shall receive for the use of such road at intervals named a specified part or proportion of the income, earnings or profits of the railroads whose receipts are so combined and the contract, in such case, may apportion out of the amount so to be received by the city and specify a portion thereof which shall be deemed to be the rental for the use of each of the roads of the city maintained, equipped and operated under such contract. In any such case the contract shall provide for determining the amount of the income, earnings or profits of the railroads whose gross earnings are so combined, and may authorize the retention, prior to the payment of any sums to the city for or on account of the investment of the city in the construction of such road or for the use of the same, of:

1. A specified sum of money, which may represent the average annual income from operation of such railroad theretofore constructed during a period specified in such contract;

2. A sum not exceeding six per centum per annum for each year upon the investment of the contractor, including brokerage charges not exceeding three per centum, in the construction and equipment of such road of the city to be maintained and operated under such contract, and in the construction and equipment of extensions of any railroads and tracks not owned by the city thereafter constructed and to be operated under such contract; and

3. A sum not exceeding the annual expense or cost to the contractor, plus one per centum per annum, on account of the investment of the contractor in betterments or improvements upon, or additions to such road of the city, and upon or to any railroads not owned by the city and operated under such contract, and upon or to the equipment thereof.

Such contract may also provide that such payments shall be cumulative, and that any deficiency with respect thereto shall be paid off and discharged annually out of such gross receipts before any payments by way of rental or compensation for the use of such roads shall be made to the city. The contract may provide for a readjustment at specified intervals of the part or proportion of such income, earnings or profits of the railroads, which the city shall receive, or of the portion of the amount received by the city which shall be deemed to be the rental of each such road owned by the city, and may prescribe a method of determining by arbitration or by the court the amount which the city shall receive as its part or proportion of such income, earnings or profits or as such rental upon any such readjustment thereof.

h. Such rental and the term for the operation of the railroad included in any such contract shall begin, as to such road, or any section thereof, at such time as may be provided in the contract. The aforesaid rental shall be paid at such times during each year or at such intervals as the board of transportation shall require. If a contract to equip, maintain and operate such road be made with the person having or to have the contract to construct the same and such contract shall provide that such road shall be constructed wholly or in part at the cost of such person such road, however, to be the property of the city in the same manner and to the same extent as if constructed wholly with public money, then the contract may provide as an alternative in lieu of the rental above provided for that any and all income and increase derived by the contractor or on his behalf in any manner from the enterprise of constructing, equipping, maintaining and operating such road, after deducting operating expenses, taxes, payments to reserve and amortization funds as provided for in the contract, and not exceeding six per centum interest per annum payable quarterly upon the actual cost to the contractor of construction and equipment of such road, shall be divided share and share alike between the contractor and the city. The rental and any sums payable under such contract, except any sum of money that may be contributed toward the construction of any road by the contractor having the contract for the equipment and operation of such road, shall be applied first to the payment of the interest upon

obligations issued by such city for the construction and equipment of such road, as the same shall accrue and fall due. The remainder of such rental and moneys not required for the payment of such interest shall be kept separate and apart from any and all other moneys of such city and shall be securely invested and, with the annual accretions of interest thereon, shall constitute a sinking fund for the payment and redemption at maturity of the aforesaid obligations. Such rental, moneys and accumulations of such fund over and above so much as may be required for payment of interest and principal of such obligations, shall be paid into the rapid transit fund provided in section thirty-four of this chapter.

i. Any such contract also may provide for a renewal or renewals not to exceed twenty years in the aggregate of the lease of such road upon the expiration of an original term of not more than twenty years upon such terms and conditions, to be approved by the board of estimate and the mayor, as to the board of transportation may seem just and proper. Such contract also may contain provisions for the valuation of the whole or a part of the property of such contractor employed in and about the equipment, maintenance and operation of such road, and for the purchase thereof by the city, at such valuation, or a percentage thereof, should such lease not be so renewed at any time, or should it be terminated or expire as aforesaid. Such contract also shall state the date on which the operation of the road, or any section thereof, shall commence.

j. In case the title to the equipment of such road shall not be vested in the city, the city also shall have a first lien upon the rolling stock and other property of such contractor, constituting the equipment of such road and used or intended for use in the maintenance and operation thereof, as further security for the faithful performance by such contractor of the covenants, conditions and agreements of such contract, on his part to be fulfilled and performed. In case of the breach of any such covenant, condition and agreement such lien shall be subject to foreclosure by action, at the suit of such city, in the same manner, as far as may be, as is then provided by law in the case of foreclosure by action of mortgages on real estate. The board of transportation, however, from time to time, may relieve from such lien

any of the property to which it may attach, upon receiving additional security, which may be deemed by such board to be the equivalent of that which it is proposed to release and otherwise upon such terms as to such board shall seem just.

k. The contract shall further provide that in case of the failure or neglect on the part of such contractor, after such notice as the contract may prescribe, faithfully to observe, keep and fulfill the conditions, obligations and requirements of such contract, the city, by the board of transportation, may either terminate the contract or take possession of such road and the equipment thereof, and as the agent of such contractor, either maintain and operate such road, or enter into a contract with some other person, for the maintenance and operation thereof. Such contract shall contain such terms, conditions and provisions in relation thereto as such board shall deem necessary or desirable for adequately safeguarding and protecting the rights and interests of the city. Such contract shall also contain appropriate terms, conditions and provisions for accomplishing such termination or taking possession.

l. Any existing railroad corporation owning or actually operating a railroad wholly or in part within the limits of the city and approved by the board of transportation, shall be competent and is hereby authorized to enter into any contract for the equipment, maintenance and operation of any railroad pursuant to the provisions of this chapter, or, after such a contract shall have been made, shall be competent and is hereby authorized, with the approval of such board, to contract with the original contractor or his assignee or assignees for the maintenance and operation (including the equipment or any part thereof) of any railroad constructed or in process of construction or to be constructed pursuant to the provisions of this chapter, and shall have all the powers necessary to the due performance of such contract. A corporation may be organized under the railroad law, for the purpose of constructing, equipping, maintaining and operating a railroad pursuant to the provisions of this chapter or for the purpose of maintaining and operating a railroad, including the equipment or any part thereof, already constructed, in process of construction or to be constructed

pursuant to the provisions of this chapter. Any corporation so organized, upon the approval in writing of the board of transportation, in addition to the powers conferred by the general act under which such corporation is organized, shall be empowered, and is hereby authorized to enter into any contract permitted by law for the maintenance and operation when constructed, including the equipment or any part thereof if desired, as the case may be, of any such railroad owned or to be owned by the city, constructed or to be constructed at the expense of the city or of such corporation or both as provided by this chapter. The certificate of such approval shall be filed in the office of the secretary of state, and a copy thereof certified to be a true copy by the secretary of state or his deputy, shall be evidence of the fact therein stated. A corporation so organized shall not be required to procure the consent of the public service commission as provided for in section nine of the railroad law.

m. Where in this section or in section thirty-one of this chapter the consents referred to in section twenty-one of this chapter are mentioned, they shall be construed to include any consent given by the commissioners appointed by the appellate division of the supreme court, and confirmed by such appellate division in lieu of the consent of property owners as provided in this section.

§ 41. Contract for maintenance and operation. a. If in the opinion of the board of estimate and the mayor, a contract for the equipment, maintenance and operation as provided for in the preceding section shall be inexpedient, impracticable or prejudicial to the public interest, the board of transportation, with the approval of the board of estimate and the mayor, may equip such road in whole or in part, or purchase power for operation thereof, for and at the public expense, by contract therefor subject to the provisions of section seventeen of this chapter, and enter into a contract with any person, who or which in the opinion of such board of transportation shall be best qualified to fulfill and carry out such contract for the maintenance and operation of such road for a term of not to exceed ten years to be specified in such contract. The provisions of the foregoing sections in respect of contracts for the

equipment, maintenance and operation of such road shall apply to such contract for maintenance and operation so far as such provisions are pertinent and applicable thereto except that the renewal or renewals of such contract provided for therein shall not exceed ten years in the aggregate.

b. Every grant or contract made under the provisions of this chapter, as part of which the city shall have a right to terminate any right or franchise or any contract for maintenance and operation of any railroad, shall provide that if at any time in ascertaining the amount to be paid by the city as a condition of such termination or at the expiration of the full term, it shall be necessary that a valuation of any plant, property, equipment, construction or any investment in any thereof, shall be determined, such valuation shall in default of agreement be determined by arbitration or by the court. Every such grant or contract shall also make provision to assure supervision by the board of transportation of all operations of such grantee or contractor in and about such enterprise and for keeping and for access to and examination, use and production of any and all books, records and memoranda of such operations, not only of the grantee or contractor but of any contractor, sub-contractor, banker or person furnishing money, material or supplies directly or indirectly to such enterprise, to the extent that such books, records and memoranda have to do therewith, and for ascertaining the cost to the grantee or contractor and the value of any equipment, property or construction furnished or done pursuant to such grant or contract, including permanent additions to construction from time to time and for a method of determining the amount of such cost forthwith upon the furnishing or completion of the same by arbitration or by the court in default of an agreement upon the amount thereof. The grant or contract may provide that if the amounts to be paid to the grantee or contractor upon any such termination shall not have been finally determined or paid prior to or at the time when the termination is under such notice given to take effect the title to and right of possession of the property, and the right of possession of such railroad may nevertheless pass to the city or to a new contractor, and that the city or such new contractor having given proper and sufficient sureties shall pay to the contractor the amount so determined, with interest from the

time aforesaid.

c. Every grant or contract made under the provisions of this chapter by the terms of which the city in lieu of rental shall be entitled to a portion of income or increase derived from the enterprise shall make provision for definition and determination from time to time of the items to be included in operating expenses, taxes, payments to reserve and amortization funds and for the percentages or amounts to be set aside therefor and for interest upon construction cost. The board of transportation shall prescribe in the grant or contract a period for amortization by the grantee or contractor of the actual cost of plant and property other than equipment, or actual cost to the contractor of the construction of such road and the period so prescribed shall end with the term of the grant. Any and all sums of money received by the city from or under any grant or contract made under the provisions of the rapid transit act or this chapter, over and above such sum as is required by law to be paid into a sinking fund to meet the payment of interest or principal on city bonds issued for construction and equipment of any railroad pursuant to any such contract, and except any sum of money that may be contributed toward the construction of any road by the contractor having the contract for the equipment and operation of such road, shall be kept separate and apart from any and all other moneys of such city and paid into a fund to be known as the rapid transit fund, and shall be applied under the direction of the board of estimate with the approval of the mayor only to or toward the construction of railroads, or the purchase of plant and property or equipment of railroads, pursuant to the provisions of this chapter, or to deficiencies in the operation or rental of railroads owned by the city, or in the operation of railroads owned and operated by the city pursuant to this chapter.

d. Unless otherwise provided by law the board of transportation, with the approval of the board of estimate and the mayor, shall have and exercise the powers, rights and privileges reserved or given to the city to terminate any right, privilege, franchise, authority or contract granted or entered into, or which may be exercised under the provisions of this chapter, and may do and perform any and all things requisite and

necessary to any such termination.

§ 42. Contract for construction or operation. a. Every contract for the construction or operation of such road shall provide by proper stipulations and covenants on the part of the city, that the city shall secure and assure to the contractor, so long as the contractor shall perform the stipulations of the contract, the right to construct or to operate the road as prescribed in the contract, free of all right, claim or other interference, whether by injunction, suit for damages or otherwise, on the part of the owner, abutting owner, or other person. The person bidding or contracting for the construction, equipment, maintenance or operation of the railroad included in any such contract shall make such deposit of cash or securities and shall give a bond to such city, in such amount as the board of transportation shall require, and with sureties to be approved by such board, who shall justify each in double the amount of his liability upon such bond. Such bond shall be a continuing security, and shall provide for the prompt payment by such contractor, of the amount of annual rental, if any, specified in the aforesaid contract, and also for the faithful performance by such contractor of all the conditions, covenants and requirements specified and provided for in such contract. In lieu of such continuing bond such contractor, upon the approval of the board of transportation, may deposit with the comptroller cash equal in amount to the entire amount of such bond or securities which are lawful for the investment of the funds of savings banks within this state and are worth not less than the entire amount of such bond. If such bond shall have been given then after the deposit of cash and securities in lieu thereof as aforesaid, and the approval thereof by such board, such bond shall be surrendered by the city to the contractor duly canceled by the comptroller. In the event of the deposit of cash or securities as aforesaid, the contract may provide for the payment to the contractor of the income of such securities or of interest upon such moneys at a rate not higher than the highest rate received by the city upon the deposit of its funds with banks, and may also provide for withdrawal of securities so deposited upon deposit of cash or securities of the same value, provided that all such securities shall be such as are so lawful for the investment of the

funds of savings banks. The board of transportation, in or by any such contract and in its discretion, may require, and the rapid transit act shall be deemed to have authorized the board of transportation or any of its predecessors to have required, prior to the sixteenth day of May, nineteen hundred six, any other security upon any such contract.

b. No contract entered into under authority of this chapter shall be assigned without the written consent of the board of transportation. Such contractor, with such written consent and upon such terms and conditions as such board shall prescribe, may either assign the whole of such contract or separately the right or obligation to maintain and operate such road for the remainder of the term of years specified in such contract and all rights with respect to such maintenance and operation, or included in the leasing provisions of such contract, but subject to all the terms and conditions therein stated. The assignee, in and by such assignment, shall assume all of the obligations of the original contractor under or with respect to such leasing provisions and all obligations which relate in any way to such operation and maintenance. Such board before giving its consent shall be satisfied that the pecuniary responsibility of the assignee shall be no less than that of such original contractor. All of the security or securities which the city shall have received for the performance by the original contractor of such leasing provisions and of all provisions of the contract with respect to such operation and maintenance shall continue in full force as provided in such contract or any modification thereof, as security for the performance by such assignee of all obligations of the contractor under or with respect to such leasing provisions and such maintenance or operation.

c. It shall be deemed to be part of every such contract that, in case the board of transportation shall cease to exist, the legislature may provide what public officer of the city shall exercise the powers and duties belonging to such board under or by virtue of any such contract, and that in default of such provision, such powers and duties shall be deemed to be vested in the mayor of the city. Every such contract shall contain appropriate terms, conditions and provisions for safeguarding the interests of the city in the event of the failure or neglect of such

contractor to construct, equip, maintain or operate the railroad according to the terms of the contract, and such board may bring such action in the name and in behalf of the city as may be necessary for the sufficient and just protection of the rights of the city, or upon such terms as seem just to it, and with such person as to such board may seem proper, may make another operating contract and lease of such road for the residue of the term of the contractor in default. Such board may bring action in the name and on behalf of the city to recover from the contractor the amount due from the contractor, less the amount which shall have been received by the city, under or by virtue of such new contract, and for all other damages sustained by the city by reason of such default.

§ 43. Persons with whom contracts may be made. Nothing contained in this chapter shall be deemed, or be construed as intending to limit, or as limiting, in any manner, the discretion of the board of transportation, provided in the opinion of the board of estimate and the mayor, it is expedient, practicable and in the public interest to do so, to enter into contracts for construction, equipment, maintenance and operation with the same person, or for any one or more of such purposes with the same person or with different persons either in one contract or in separate contracts, and at any time or times.

§ 44. Modification of and changes in contracts. a. The board of transportation for and on behalf of the city, from time to time with the consent, in writing, of the bondsmen or sureties of a person, who has contracted with such board or its predecessors to construct, equip, maintain or operate any road, may agree with such contractor upon changes in and modifications of such contract, or of the plans and specifications upon which such road is to be constructed, but no change or modifications in the plans and specifications consented to and authorized pursuant to section twenty-one of this chapter shall be made without the further consent and authorization provided for in such section.

b. The board of transportation, from time to time, but only with the approval of the board of estimate and the mayor, may agree with railroad companies upon changes in and modifications of the terms and conditions of any contract under or pursuant to which any railroad, or any part thereof, has been or is to be constructed, equipped, maintained or operated, and with like approval such contract may be cancelled and replaced by a new contract to include the railroads embraced in such existing contract. The board of transportation may include therein provision for the acquisition by the city of the railroads or any of them or portions of any of them and is authorized and empowered on behalf of the city to accept title thereto or control thereof and to provide for the payment thereof through amortization or otherwise as the board of transportation may determine.

c. Any other provision of this chapter to the contrary notwithstanding, the board of transportation shall not make any new contract or modify any contract for the construction, equipment, maintenance or operation of any railroad without the approval or consent of the board of estimate and the mayor.

d. If any contract for construction or equipment of a railroad or section thereof has been awarded and a part of the work therein required to be performed by the contractor has been done or is in process of being done as to a portion of the route of such road and if another route for a railroad has been or shall be established by the board of transportation under section twenty of this chapter and consented to as provided in section twenty-one of this chapter, which, or a portion of which, in the opinion of such board should in the public interest be substituted in place of a portion of the road to be constructed or equipped under such contract, then the board with the consent of the board of estimate and the mayor, as soon as the detailed plans therefor have been prepared as prescribed in section twenty-two of this chapter, without advertising for proposals, may agree as provided in this subdivision with such contractor upon changes in and modifications of his contract for the purpose of making such substitution. Such agreement in such case may provide, in consideration, among other things, of a surrender by the contractor of his right to construct or equip a

designated portion of the road or section of road described in his contract, that such contractor shall complete the construction or equipment of the remainder of the road or section described in such contract and shall in place of the portion surrendered construct or equip a railroad or section of a railroad upon such substituted route and in accordance with the plans and specifications adopted therefor for such sum of money as may be provided in such modifying agreement. As part of the consideration of such modifying agreement, the agreement may also provide that such contractor shall guarantee to the city, with proper and sufficient sureties, that in the event that the city shall enter into such modifying agreement providing for construction of such substituted route or section thereof by the contractor, the cost to the city of providing for the construction of any additional section of such railroad upon such substituted route in continuation of that portion thereof which is to be constructed by the contractor under such modifying agreement, shall not be in excess of an amount specified in such modifying agreement or that if the contract for construction of any such additional section is to be awarded after advertisement for proposals under section seventeen of this chapter, that a responsible bidder for the construction thereof acceptable to the city shall be obtained at a price not exceeding a specified amount.

e. If any contract for equipment, maintenance and operation of a railroad has been made and part of the work of construction thereof has been done or is in process of being done, and if another route for a railroad has been or shall be established by the board of transportation under section twenty of this chapter and consented to as provided in section twenty-one of this chapter, which, or a portion of which, in the opinion of the board in the public interest, should be substituted in place of a portion of the road to be equipped and operated under such contract, for use and operation in connection with or as part of the route, a portion of which has been in part already constructed or is in process of construction, then the board with the consent of the board of estimate and the mayor may agree as provided in this subdivision with the person having the contract for equipment, maintenance and operation of such railroad, upon changes and modifications of such contract. Such agreement in such case may provide, in consideration, among other

things, of the surrender by the contractor of his right to equip, maintain and operate a designated portion of the railroad described in his contract, that in place of the portion surrendered, he shall equip, maintain and operate a railroad or portion of a railroad upon such substituted route. The rental to be received by the city under such contract, as changed and modified, representing compensation to the city for the use of such substituted part of such railroad operated thereunder necessarily need not be a portion of the income, earnings or profits from the operation of the railroads combined as provided in subdivision d or subdivision g of section forty of this chapter equal annually, if earned, to the interest and one per centum for sinking fund upon the amount of city bonds issued for the investment of the city in the construction thereof but may be either a specified sum of money or a specified part or proportion of income, earnings or profits of such substituted road, or both a sum of money and a part or proportion of such income, earnings or profits, or may be such portion of the income, earnings and profits of the railroads so combined as may be provided in such modified contract as rental for such substituted railroad and for the other railroads of the city to be equipped, maintained and operated under such contract as so modified.

§ 45. Extensions and additional lines. a. Whenever the board of transportation shall determine that the public interests so require, it may with the approval of the board of estimate and the mayor, without advertising for proposals, but only after a public hearing under section thirty-four of this chapter, enter into a contract with the person owning, operating or agreeing to operate, any existing railroad for the construction, equipment, maintenance and operation, or for the equipment, maintenance and operation of any additional or proposed railroad to be owned by the city for which necessary consents as provided in section twenty-one of this chapter shall have been obtained, provided that such proposed railroad shall be operated in conjunction with such existing railroad for a single fare. Such contract for the equipment, maintenance and operation of such road or any portion thereof may be made and entered into before consents shall have been obtained therefor as provided in section twenty-one of this chapter. In such case

such contract for equipment, maintenance and operation of such road or any portion thereof shall be upon condition that such contract shall not become operative or go into effect as to such road or such portion thereof unless and until the city shall acquire the right to construct such road or portion thereof by obtaining such consents.

b. Such contract for construction, equipment, maintenance and operation or for equipment, maintenance and operation may be made in either of the two following ways:

1. If such existing railroad be wholly or in part within the limits of the city, such contract may be made under and pursuant to the provisions of sections thirty-one, forty, and forty-two, so far as such sections shall be applicable, with the railroad corporation owning or actually operating or agreeing to operate such existing railroad, but the term for equipment, maintenance and operation of such proposed road, as specified in such contract, pursuant to such sections, shall not be for a period longer than the unexpired term of the franchise or contract for the maintenance and operation of such existing railroad and any renewals provided for in such franchise or contract.

2. If such existing railroad be a rapid transit railroad constructed wholly or in part at the public expense under the provisions of the rapid transit act or this chapter and wholly or in part in operation such contract may be made with the person having the contract for the construction and operation of such existing rapid transit railroad by the terms of which such proposed rapid transit railroad if not constructed or to be constructed by the board of transportation under separate construction contracts shall be constructed as extra work under the terms of such existing contract either without expense to the city or for such sum of money or such proportion of the actual cost thereof as may be agreed upon to be paid by such city for or toward the construction thereof, the railroad when so completed as extra work to be subject to the terms and conditions of such original contract except so far as shall be otherwise specified and agreed.

c. Every such contract for such construction, equipment, maintenance

and operation or for such equipment, maintenance and operation of such proposed railroad made in either of the foregoing specified ways, shall also make provision that the city, upon giving a specified notice, may terminate the contract for equipment, maintenance and operation of any such proposed railroad as to all and if deemed advisable as to any specified portion thereof at any time after the expiration of ten years from the date when operation of any part of such proposed railroad or of such specified portion thereof shall actually begin, but such right of termination of any such contract shall be upon condition as follows:

1. If the title to the equipment of such proposed railroad shall not be vested in the city then that the equipment of the proposed railroad or portion thereof suitable to and used for the purposes of such railroad as apportioned pursuant to the contract, shall be purchased and taken by the city at an amount which shall be ascertained as provided in the contract, but which shall not be greater than the actual cost thereof, plus fifteen per centum thereof, and such equipment, upon such termination of such contract, shall become and be the property of the city on paying to the contractor such amount. In case the title to the equipment of such proposed railroad shall be vested in the city then that the city shall pay to the contractor an amount for his investment in the equipment of such proposed railroad, or portion thereof, which shall not exceed the actual cost to the contractor of equipment of such railroad or portion, plus fifteen per centum thereof, and shall decrease under provisions of the contract as the term thereof continues so that at the end of the full term of the contract no such amount shall be paid except that if additional equipment shall be required and supplied after the railroad, or portion thereof, shall have been put in operation, and if the contract shall provide that title to such additional equipment shall vest in the city when supplied, then the city shall pay an amount for the investment of the contractor in such additional equipment which amount shall not exceed the actual cost to the contractor of such additional equipment plus fifteen percentum thereof and shall diminish so that at the end of the full term of the contract the city shall be required to pay for such investment in additional equipment only such amount as shall be provided in such contract.

2. Upon the further condition if such proposed railroad shall be constructed wholly or in part at the cost of the contractor that the city shall also pay to the contractor an amount for his investment in the construction of such proposed road or portion thereof, which shall not exceed the actual cost to the contractor of constructing such road or portion, plus fifteen per centum thereof, and shall decrease under provisions of the contract as the term thereof continues so that at the end of the full term of the contract no such amount shall be paid, except that if betterments, additions or improvements shall be required by the board of transportation or approved by such board prior to the construction thereof and be constructed wholly or in part at the cost of the contractor, then that the city shall pay an amount for the investment of the contractor in such betterments, additions or improvements which shall not exceed the actual cost to the contractor of constructing such betterments, additions or improvements plus fifteen per centum thereof and which amount shall diminish so that at the end of the full term of the contract the city shall be required to pay for such investment in betterments, additions or improvements only such amount as shall be provided in the contract.

d. The contract shall provide a method of ascertaining the amount to be paid for such equipment and for the investment of the contractor in the construction of such proposed road upon a termination by the city of such contract and for the equipment of such proposed railroad at the end of the full term of the contract. The contract may provide for determining from time to time, in default of agreement, by arbitration or by the court, a valuation of such investment of the contractor in the construction of such proposed road and of the equipment or any part or portion of either thereof for any purpose under such contract. The contract may provide that the title to the equipment as well as to such road shall vest in the city from the beginning and that the amount to be paid by the city for the investment of the contractor in such equipment shall decrease as the terms of the contract continues so that at the end of the full term of the contract no amount shall be payable therefor except for additional equipment as aforesaid. The contract shall provide that upon the expiration of the term fixed in the contract, the contract shall end without compensation to the contractor except as provided in

the contract, for betterments, additions or improvements to any such railroad required to be made or approved by the board of transportation prior to the construction thereof during the term of any such contract, and, if the title to the equipment be not vested in the city, for equipment suitable to and used for the purposes of such contract to the amount, if any, ascertained as provided in the contract, and that in such event such equipment shall become the property of the city upon payment to the contractor of such amount, or, if the title to the equipment be vested in the city, then an amount for the investment of the contractor in additional equipment for any such railroad to be ascertained as provided in the contract.

e. The contract also may include a provision for modification of the lease or contract for equipment, maintenance and operation of such existing railroad so that such latter lease or contract may be terminated by the city upon giving a specified notice at the same time and in connection with the termination of the contract as to such proposed railroad, but such right of termination of any such contract as to such existing railroad shall be upon condition:

1. That the equipment of such railroad suitable to and used for the purposes of such contract shall be purchased and taken by the city at an amount which shall be ascertained as provided in the contract, but shall not be greater than the actual cost thereof plus fifteen per centum thereof, and such equipment, upon such termination of such contract, shall become and be the property of the city on paying to the contractor such amount, or

2. Upon the further condition, if such existing railroad shall have been constructed wholly or in part at the cost of the contractor, that the city also shall pay to the contractor or to his assignee in possession an amount for the investment in the construction of such existing road which shall not exceed the actual cost to the contractor of constructing such road plus fifteen per centum thereof, and shall decrease under the provisions of the contract as the term thereof continues, so that at the end of the full term of the contract, and of any renewal thereof contained therein, no such amount shall be paid.

The contract as so modified shall provide a method of ascertaining the amount to be paid for such equipment and for the investment of the contractor in the construction of such road upon a termination by the city of such contract, and for the equipment of such existing railroad at the end of the full term of the contract. Such contract as so modified may provide for determining from time to time, in default of agreement, by arbitration or by the court, a valuation of such investment of the contractor in the construction of such road and of the equipment, or any part or portion of either thereof, for any purpose under such contract. The contract also may provide for assuring that in case a new contract for equipment, and for maintenance and operation of such existing railroad, or proposed railroad, is made after such termination, pursuant to notice, or after the expiration of the full term of such contract, that the title to and possession of the equipment so taken and the right to the possession of the railroad so constructed may be transferred directly to the new contractor upon his paying the amount so required.

§ 46. Franchise for private construction, maintenance and operation.

a. If or when the necessary consents have been obtained and the detailed plans and specifications have been prepared by the board of transportation for a railroad, such board, with the approval of the board of estimate and the mayor, may grant a franchise to construct, maintain and operate such a railroad. The board of transportation shall have power to prescribe all such terms and conditions of such grant and to require such security to be given and filed for the keeping and performance of such terms and conditions as it may deem to be for the interest of the public and of the city and may provide that in connection with the construction of such railroad by the grantee at its own expense any galleries, ways, subways or tunnels for sub-surface structures which may be included in any such plans shall be also constructed by the grantee at the public expense, and in such case the sum to be paid therefor shall be separately stated and the amount appropriated and paid out of the funds hereafter authorized to be provided in case of such construction, and such board may provide

separately for the maintenance, supervision, care and operation thereof as authorized by the provisions of section forty of this chapter.

b. The grant shall provide that such railroad shall be constructed by and at the expense of the grantee under the direction and supervision of the board of transportation and in accordance with such detailed plans and specifications; that the construction shall be begun within a time to be specified and shall be finished within a specified time thereafter; and that operation of such railroad shall be begun within a specified time, and may fix the time within which portions of such railroad shall be begun and finished and put in operation, and may provide that such board may extend the time of beginning, of completion and of operation of such railroad or portion thereof, and that if the grantee shall fail to begin or to finish the construction or begin the operation of such road or portion thereof at or within any time so fixed, or shall fail to comply with any of the terms or conditions of such grant, a penalty specified, or the grant and any construction pursuant thereto, may be forfeited to the city.

c. Such grant shall contain a reservation to the city of the privilege upon giving a specified notice to terminate such franchise and to purchase and take the plant and property of the grantee suitable to and used for the purpose of such railroad at any time after the expiration of ten years from the date when operation of any part of such railroad shall begin upon paying an amount for such plant and property as property, excluding any value for the franchise, which amount shall not exceed actual cost of such plant and property, plus fifteen per centum thereof, and shall decrease under provisions of the grant as the franchise continues so that at the end of the full term of the grant no amount shall be paid except for equipment as hereinafter provided. The grant shall provide a method of ascertaining the amount to be paid for such plant and property upon termination by the city of such franchise and for the equipment of such railroad at the end of the full term of the grant. The grant may provide for determining from time to time, in default of agreement, by arbitration or by the court, a valuation of such plant and property, or any part or portion thereof, for any purpose under such grant. The grant shall make adequate provision for lien upon

plant and property and by way of penalty or forfeiture of the grant and any construction pursuant thereto or otherwise to secure compliance with the terms of such grant, efficiency of service at reasonable rates and the maintenance of the property in good condition throughout the full term of the grant.

d. The grant shall provide that any and all income and increase derived by the grantee or his assignee or any successive holder of the grant or on his or their behalf in any manner from or in connection with the enterprise of constructing, equipping and operating such railroad, after deducting operating expenses, taxes, payments to reserve and amortization funds as provided for in such grant, and not exceeding six per centum interest per annum payable quarterly upon the actual cost of construction and equipment of such road, shall be divided share and share alike between the grantee and the city, and that upon the expiration of the period specified in the grant the franchise shall end and the plant and property suitable to and used for the purposes of such railroad, except equipment as defined in the grant, shall become the property of the city without compensation to the grantee, and that such equipment shall also become the property of the city upon payment to the grantee of an amount to be ascertained as provided in the grant. The grant may also provide for assuring that in case a new grant of a franchise to maintain and operate such railroad is made after any such determination of such franchise and purchase and taking of such plant and property pursuant to such notice or after the expiration of the full term of the grant, that the title to and possession of the plant and property so taken and of the equipment at the end of such full term may be transferred directly to the new grantee upon his paying the amount required as aforesaid. At any time within one year prior to the date when the franchise shall be terminated or forfeited by the city or shall come to an end by the expiration of its full term or at any time thereafter, the board of transportation with the approval of the board of estimate and the mayor, may grant a new franchise under the provisions of this section for the construction wholly or in part of such railroad and for the maintenance and operation thereof from and after the date of such termination, forfeiture or end of such grant, or the board of transportation, with like approval, may enter into

contracts for the equipment, maintenance or operation of such railroad, or may itself operate such road, after such termination, forfeiture or end of such grant as provided in sections thirty-two, forty, forty-one, forty-two and forty-three of this chapter in respect of railroads constructed at the public expense.

e. A certificate shall be prepared by the board of transportation attested by its seal and the signature of its presiding officer, setting forth in detail the action taken and grant made by such board with respect to such railroad, and the terms and conditions aforesaid which shall be delivered to such grantee upon the receipt by such board of a written acceptance of the terms, conditions and requirements of the grant duly executed by such grantee so as to entitle it to be recorded. Such certificate shall be filed in the office of the secretary of state and a duly certified copy thereof shall be filed in the office of the clerk of the county in which such railroad or some part thereof is situated. Upon the fulfillment by such grantee of such terms, conditions and requirements enumerated in such certificate as such board may require to be fulfilled as a condition precedent to commencing such work, the grantee shall in such cases possess in addition to its existing powers, all the powers conferred by this chapter upon corporations receiving a grant of a franchise thereunder with respect to the railroad so authorized to be constructed and when such certificate shall have been duly filed, such grantee may construct such railroad with all the rights provided in such certificate but in every case subject to all the provisions and conditions of such certificate. Such certificate, when delivered to and accepted by such grantee, shall be deemed to constitute a contract between the city and such grantee according to the terms of such certificate. Such contract shall be enforceable by the board of transportation acting in the name of and in behalf of the city, or by the grantee according to the terms thereof, but subject to the provisions of this chapter. The terms of such contract, from time to time with like approval and with the consent of the grantee, may be modified by such board.

f. Any existing railroad corporation owning or actually operating a railroad wholly or in part within the limits of the city and approved by

such board shall be competent and is hereby authorized to bid for and receive any grant pursuant to the provisions of this section. If the successful bidder or bidders be not a corporation, then a corporation may be organized under the railroad law by him or them for the purpose of receiving such grant and of constructing, equipping, maintaining and operating a railroad pursuant to the terms of any such certificate and a corporation so organized shall not be required to procure the certificate or approval of the public service commission as provided for in section nine of the railroad law or section fifty-three of the public service law.

g. After the proposed certificate shall have been prepared and approved as to the form thereof by the board of estimate, the board of transportation, prior to the granting of any such franchise, shall advertise for proposals or bids for such franchise under such certificate by a notice to be printed once a week for two successive weeks in not less than two daily newspapers published in such city, and in such newspapers published elsewhere than in such city as such board shall determine, and may require security from bidders for the execution of their bids if accepted. Such notice shall set forth the points within such city between which such railroad is proposed to be operated, the route in general terms to be followed, and such other details and specifications as the board shall deem proper, and shall refer to such proposed certificate and such route, detailed plans and specifications on file in its office for further details. Such notice shall state the time and place at which proposals will be received and opened. All such proposals shall refer to such proposed certificate and shall offer the terms upon which any such proposer or bidder shall undertake to construct, maintain, equip and operate such railroad in so far as to set forth all or any of the following matters as may be required by the board of transportation:

1. The annual interest desired upon the cost of construction and equipment prior to payment of any part of income or increase to the city;

2. The period at the end of which the plant and equipment except

equipment as aforesaid shall become the property of the city without compensation;

3. The amount of money for which galleries for subsurface structures to be paid for with public money in connection with the construction of such railroad will be constructed;

4. Such transfer conveniences with other roads, specifications as to the cost of construction and other provisions as such board may think proper to require.

The board of transportation shall attend at the time and place specified and shall publicly open all proposals that shall have been received, but such board shall not be bound to accept any proposals so received, but may reject all such proposals and readvertise for proposals in the manner hereinbefore provided, or may accept any of such proposals as will, in the judgment of such board, best promote the public interest, and grant a franchise and execute such certificate accordingly, subject to the approval of the board of estimate and of the mayor.

h. Every such corporation shall have power:

1. To take and hold such voluntary grants of property as shall be made to it, to aid in the construction, maintenance and accommodation of its railroad, but the real estate received by voluntary grant shall be held and used for the purposes of such grant only.

2. To purchase, lease, hold and use all such property as may be necessary for the construction and maintenance of its railroad and necessary devices and appurtenances.

3. To cross, intersect, join and unite its railroad with any other railroad at any point on its route and upon the grounds of such other railroad company, with the necessary devices and appurtenances.

4. To take and convey persons and property on its railroad by the

power or force of electricity or compressed air so used as to involve no combustion or impurity of air in tunnels or cars or any other power of like description approved by the board of transportation, and to receive compensation therefor.

5. To enter upon and underneath the several streets designated by the board of transportation and enter into and upon the soil thereof; to construct, maintain, operate and use, in accordance with the plan adopted by such board, a railroad upon the route and to the points decided upon, and to secure the necessary foundations and erect the structures which may be required to secure safety and stability in the construction and maintenance of the railroads constructed upon the plan adopted by such board, and which may be necessary for the operation thereof, except that nothing in this chapter shall authorize the construction of a railroad crossing the track of any steam railroad in actual operation at the grade thereof. It shall be lawful to make such excavations and openings along the route through which such railroad shall be constructed as shall be necessary from time to time. In all cases the surface of such streets around such foundations, and structures shall be restored to the condition in which they were before such excavations were made, as near as may be, and under the direction of the proper local authorities. In all cases the use of the streets designated by such board, and the right of way through them, for the purpose of a railroad, as herein authorized and provided, shall be considered, and is hereby declared, to be a public use, consistent with the uses for which the streets are publicly held. Such corporation shall not have the right to acquire the use or occupancy of public parks or squares, or the use or occupancy of any of the streets, except such as may have been designated for the route of such railroad, and except such temporary privileges as the proper authorities may grant to such corporations to facilitate such construction.

i. Every corporation which shall have taken or shall take or hold any franchise or contract to construct, maintain and operate a railroad under the provisions of this chapter shall have the right to acquire and hold such property or property rights appurtenant thereto, as may be necessary to enable it to construct, maintain and operate such railroad

and such as may be necessary for devices and appurtenances. In case any such corporation cannot agree with the owner or owners of such property it shall have the right to acquire title to the same in pursuance of the terms and in the manner prescribed in the condemnation law. The existence of an easement acquired or reserved by any such corporation for any of the purposes specified in this section, shall not be deemed an incumbrance under any law relating to investments in mortgages upon real property by corporations, trustees, executors, administrators, guardians or other persons holding trust funds, but the effect of such an easement upon the real property which it affects, shall be taken into consideration in determining the value thereof. When any corporation authorized under any provision of this chapter to construct, maintain or operate an additional track added to any elevated railroad in existence on the sixteenth day of June, nineteen hundred ten, or to construct, maintain or operate an extension of such railroad or to acquire terminal or other facilities for any such railroad or extension shall have duly instituted condemnation proceedings, under the provisions of the condemnation law, by serving a petition and notice in such proceedings, to acquire such property or property rights appurtenant thereto, as may be necessary to construct, maintain or operate such additional track, extension or terminal or other facilities, the court, upon due hearing had at a special term of the supreme court held in the judicial district where the property or some portion of it is situated, and upon notice in such proceedings served upon all the owners of the property at least eight days prior to such hearing, in the manner prescribed in the condemnation law for the service of the petition and notice, may, where it appears to its satisfaction that the public interests will be prejudiced by delay, direct that the plaintiff be permitted to enter immediately upon the property to be taken and devote it temporarily to the public use specified in the petition, upon depositing with the court such sum or giving an undertaking in such amount and subject to such conditions as the court may deem sufficient to secure the payment of the award that may be made, and the costs and the expenses of the proceedings and for the payment of any damages which the defendant in such proceedings may have sustained by such entry upon and use of his property. The sum so deposited or undertaking so given shall be at least equal to twice the assessed valuation, if any, of any real estate to be

so taken. The court, at any time, upon like hearing and notice given by either party to such proceedings, may give such further directions in respect to any such deposit, undertaking or condition as it may deem just and proper, and in every case the owner may conduct the proceedings to a conclusion if the plaintiff delays or neglects to prosecute the same and if the sum so deposited or security so given shall be insufficient to pay such award and costs, expenses and damages, and if the plaintiff shall fail to pay the amount of such deficiency, judgment shall be entered against the plaintiff for the deficiency and the possession of the property shall be restored to the defendant.

ARTICLE VI

ACQUISITION OF PROPERTY BY THE CITY

Section 50. Acquisition of property.

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70. Amendments of defects.

71. Appeal to the appellate division.
72. Appeal to court of appeals.
73. Property deemed acquired for public use.

§ 50. Acquisition of property. a. For the purpose of constructing or operating any road for the construction or operation of which a contract shall have been made by the board of transportation or any of its predecessors, or for the purpose of constructing or operating any part of any railroad or portion thereof relocated under the provisions of section eighty-two of this chapter, for the construction of which a contract shall have been made pursuant to such section, including necessary stations and station approaches, or for the purpose of operating or securing the operation thereof free of interference and right of interference and of action and right of action for damages and otherwise, whether by abutting owners or others, or to provide, lay or maintain sub-surface structures, such board for and in behalf of such city may acquire, by conveyance or grant to such city to be delivered to such board and to contain such terms, conditions, provisos and limitations as such board shall deem proper, or by condemnation or other legal or other proceedings, as provided in this chapter, any property rights and any and all rights, privileges, franchises and easements, including such of any thereof as may be already devoted to a public use, whether of owners or abutters, or others to interfere with the construction or operation of such road or to recover damages therefor, which, in the opinion of the board, it shall be necessary to acquire or extinguish for the purpose of constructing and operating such road free of interference or right of interference. Any such city also may exercise any of the rights to acquire such property rights upon the validation of a route in the manner prescribed in sections twenty and twenty-one of this chapter, provided that if any such right shall be so exercised prior to the time a contract for construction or operation of such route shall be entered into, the board of estimate and the mayor, as a condition precedent, shall approve such acquisition. An option granted to the board of transportation or to the city to purchase any property rights or an award in a condemnation proceeding for a period not to exceed ninety days in case of purchase of property rights, and

for a period not to exceed six months in case of purchase of such an award shall not be withdrawn or cancelled during the period therein named. Upon the trial of a condemnation proceeding on behalf of the board of transportation under the provisions of this chapter, no evidence shall be admitted, as against an owner of an offer made by or on behalf of such owner for the sale of his real estate or any part thereof to such board for or on behalf of such city, or for the sale or assignment of any right and title to an award, or any part thereof, to be made for such real estate, or any part thereof, in the proceeding; nor shall any evidence be received, as against such city, of any offer made to such owner by the board for or on behalf of the city for the purchase of such real estate, or any part thereof, or for the purchase of any award or any part thereof, to be made for such real estate, or any part thereof, in the proceeding.

b. Where any contractor for the construction or operation of such railroad shall require any property for such construction and operation, such property shall be deemed to be required for a public purpose; and with the approval of the board of transportation such property may be acquired by such contractor in all respects as such property may be acquired by such board for the city. All proceedings to acquire such property shall be conducted under the direction and subject to the approval of such board. It shall be the duty of the board whenever any property which the city shall have acquired as provided in this chapter shall be unnecessary for rapid transit purposes, to surrender the same for other public use or purpose of the city or to sell and convey the same in behalf of the city, provided, however, that no such sale or conveyance shall be made except with the approval of the board of estimate, and provided further that the proceeds of any such sale or conveyance, together with all rent received for the use, occupation or lease of any property acquired as provided in this chapter, shall, under the direction of the board of transportation, be applied either to the acquisition of other property necessary for rapid transit purposes or, in the case of rent so far as necessary, to the maintenance of property acquired for rapid transit purposes or shall be applied in all respects as the payments of rental to be made by the contractor as provided in this chapter. Whenever the city shall have acquired any property rights

as provided in this chapter and shall have thereafter acquired such property in fee, such property rights shall be deemed to be merged in such fee estate. Whenever any property rights which the city shall have acquired as provided in this chapter in or to any property shall be unnecessary for rapid transit purposes, the board of transportation may sell and release the same in behalf of the city to the owner of such property, provided, however, that no such sale or release shall be made except with the approval of the board of estimate. Whenever any property shall be sold as provided in this chapter, the grant or conveyance may contain such terms, conditions, provisos and limitations as the board of transportation may deem proper, and such board, in and by such grant or conveyance may make such covenants and give such warranty in behalf of the city as such board may deem proper, including covenants as to the size, weight or character of building which any such rapid transit railroad for which an easement in such property is reserved will support. In the case of any such sale or conveyance such board also may accept in part payment for the property sold a bond or other obligation to the city secured by purchase money mortgage on such property, such bond or other obligation and such mortgage to contain such terms and conditions as such board may deem proper, including in the discretion of the board provision for the payment of the amount of such bond or other obligation in installments.

c. The board of estimate with the approval of the mayor, upon the requirement of the board of transportation, may establish the grade of any street or change the grade of any street for the purpose of constructing or operating a rapid transit railroad or its appurtenances. There shall be no liability to abutting owners for changing for such rapid transit purposes a grade once established by lawful authority, except where the owner of the abutting property has built upon or otherwise improved the property in conformity with such established grade, and such grade is changed after such building or improvements have been made. In such cases damages occasioned by such change of grade to such buildings and improvements shall be ascertained as provided in this chapter. A grade shall be deemed established by lawful authority within the meaning of this subdivision where it was originally adopted by the action of the public authorities, or where the street or avenue

has been used by the public as of right for ten years and been improved by the public authority at the expense of the public or of the abutting owners. In case the grade of any such street shall be changed for the purpose of constructing and operating a rapid transit railroad or its appurtenances and graded according to the new grade, the board of transportation shall transmit to the board of assessors a certificate stating that the grade of the street has been changed for the purpose of constructing and operating a railroad or its appurtenances, and accompany such certificate with a plan indicating the original grade, the changed grade and the buildings or other improvements affected thereby. It shall be the duty of the board of assessors to cause to be published at the expense of the board of transportation in the City Record, or other official publication of the city, daily for two weeks, and in two daily newspapers published in the city, twice in each week for two weeks, immediately prior to such hearing, a notice which shall contain a request for all persons claiming to have been injured by such change of grade, to present, in writing to the secretary of the board of assessors, their claims. Such notice shall specify a place where, and a time when the board of assessors will receive evidence and testimony of the nature and extent of such injury. After hearing and considering such testimony and evidence, the board of assessors shall make such awards for such loss and damage, if any, as it may deem proper. The proceedings and determination of the board of assessors shall be subject to review by the board of revision of assessments of the city, as in the case of other awards of damages for change of grade of streets in such city. The city shall, within four months after the making of any such award, pay to the respective parties entitled thereto the amount of such award, and in case of its neglect or failure to pay the same at the expiration of such period, and after demand, it shall be lawful for the persons entitled to the same to sue for and recover the amount of their awards. In case any such award or compensation shall be paid to any person not entitled thereto, when the same ought to have been paid to some other person, it shall be lawful for the person to whom the same ought to have been paid to sue for and recover the same with interest and costs, as so much money had and received to his use by the person to whom the same shall have been so paid; provided that when the name of the owner or party is not set forth in the report of the assessors, or where such

owner, party or person being named therein shall be under legal disability or absent from the city, or after diligent search cannot be found, or his title to receive such award is disputed, it shall be lawful for the city to pay the sum mentioned in such report, or that would be coming to such owner, party or person, to the comptroller to be secured, disposed of and invested as the supreme court shall direct, and such payment shall be as valid and effectual in all respects as if made to such owner, party or person, himself, according to his just rights, if he had been known and had not been under legal disability.

d. Whenever the board of transportation for and in behalf of the city shall have acquired or shall hereafter acquire an easement in property by conveyance or grant for the purpose of the operation or construction of a railroad, such board in behalf of the city and as part consideration for the grant or conveyance of the easement, may enter into an agreement with the grantor of such easement or right of way, giving to such grantor or his assigns, the right of lateral or other support through, in or under such property, or any adjoining lands or space occupied by such railroad for any building erected or to be erected upon the land over which the easement or right of way has been obtained for the support and maintenance of any such building, provided that any structure that shall be built for the support of any such building shall be approved by such board and shall not extend in or under any street beyond the curb lines as fixed by the appropriate authority of such city.

e. The board of transportation temporarily may let or allow the use and occupation of any property acquired as provided in this chapter, and receive rent therefor between the time of the acquisition thereof and the time when it shall be required for construction or operation of such road, or shall be sold as aforesaid, and in case of default of any tenant may prosecute any action or proceeding to recover possession of the premises so let or used and occupied. The board of transportation, with the approval of the board of estimate, also may lease any property acquired as provided in this chapter for the highest marketable rental at public auction or by sealed bids, and always after public advertisement for a period of at least fifteen days in the City Record,

for such term not exceeding twenty-one years and upon such conditions as the board of transportation may deem proper, and, in the discretion of such board, may provide in such lease for one renewal of not more than twenty-one years. All rent received for the use, occupation or lease of any such property shall be paid to the comptroller and shall be applied in like manner as the proceeds of sales of property acquired hereunder are directed to be applied in subdivision b of this section.

f. Whenever any property owned by the city and in use by any department of the city including property acquired for park purposes shall be deemed available by the board of transportation for the purpose of operation or construction of a railroad and wherever any property acquired for and on behalf of the city by such board or any of its predecessors shall be deemed available by the head of any department of the city for the use of such department, the board of estimate, notwithstanding any provision of law, may authorize an exchange of such properties at a valuation and upon such terms as may be agreed upon by the board of transportation and the board of estimate. Whenever any property of the city shall have been turned over by any department of the city to the board of estimate to be disposed of according to law, such property or any portion thereof, upon the application of the board of transportation, may be turned over to the board of transportation at a valuation and upon such terms as may be agreed upon by such board and the board of estimate. Notwithstanding any provision of law, such property shall be used for the purpose of operation or construction of a railroad or any other purpose of the board of transportation under this chapter. The board of estimate may accept in payment or in part payment therefor property previously acquired by the board of transportation for and on behalf of the city which is no longer required for the purpose of operation or construction of a railroad or other purpose of such board under this chapter, but which in the judgment of the board of estimate may be used by the city or one or more of its departments.

g. The existence of an easement acquired for and in behalf of a city under this chapter shall not be deemed an incumbrance, under any law relating to investments in mortgages upon real property by corporations, trustees, executors, administrators, guardians or other persons holding

trust funds, but the effect of such an easement upon the real property which it affects shall be taken into consideration in determining the value thereof.

§ 51. Right of board of transportation to enter upon property. It shall and may be lawful for the board of transportation, and for all persons acting under its authority, to enter in the day time into and upon any and all property which it shall deem necessary to be acquired, or to which there may be appurtenant property rights which it shall deem necessary to be acquired or extinguished by the city, for the purpose of making the maps or surveys provided for by section fifty-two, and also to enter in like manner and for the same purpose upon any property adjacent to and within five hundred feet of the property to be so surveyed.

§ 52. Maps and plans to be filed. The board of transportation shall cause three similar maps or plans to be made of each parcel of property which it may deem necessary so to be acquired, or to which there may be appurtenant property rights necessary so to be acquired or extinguished, designating each of such parcels by a number. Upon each map or plan so made or in a memorandum accompanying it and to be deemed part thereof such board shall cause to be clearly indicated the particular property rights to be acquired or extinguished for the purposes of this chapter, together with the assessed valuation of the fee on the tax rolls of the city for each of the three years preceding the date of the approval and adoption of such map or plan by such board, in relation to each and every piece or parcel of property described upon such map or plan. Such board shall have power to cause a triplicate set of maps or plans and memoranda as herein provided for to be made as often and at such times as they shall determine, and each set of maps or plans and memoranda so made shall contain the particulars above enumerated within such district as such board shall in each case provide. The maps or plans and memoranda provided for by this section, when approved and adopted by such board, shall have written thereon a certificate of such approval, signed by the members of the board adopting and approving it, and one

copy thereof shall be filed in the office of the president of the borough, there to remain as a public record, and the other two sets of maps or plans and memoranda shall be transmitted to the corporation counsel. Such board, from time to time, may make and file further maps or plans and memoranda amending those already filed, but not so as to defeat or impair any property or interest which shall have been already acquired, or to revive any property right which may have been already extinguished by the city.

§ 53. Corporation counsel to acquire property. a. Whenever and as often as the board of transportation shall deem it to be necessary and proper that the city should acquire any such property and shall have caused such maps or plans and memoranda specifying and defining the property to be acquired, or to which are appurtenant the property rights to be acquired or extinguished, to be made and shall have certified, filed and transmitted the several copies of such maps or plans as prescribed in section fifty-two of this chapter, such board may direct the corporation counsel to take legal proceedings to acquire the same for the city, and the corporation counsel shall thereupon take legal proceedings as provided in this chapter.

b. The corporation counsel, either in person or by such counsel as he shall designate for the purpose, shall appear for and protect the interests of the city in all such proceedings. He shall furnish the court with such necessary clerks and other employees as it may require. All necessary expenses incurred by the corporation counsel in and about the proceedings provided for by this chapter for the proper presentation and defense of the interests of the city, shall be paid by the comptroller out of the funds referred to in section sixty-nine of this chapter. Property owners appearing in proceedings under this chapter shall not be entitled to recover counsel fees, costs, disbursements or allowances.

§ 54. Disposition of maps. The corporation counsel shall cause one of the maps or plans, so transmitted to him, to be filed in the office of

the register of the county, or if there be no such register, then in the office of the county clerk of the county in which the property covered by the map is situated. The map, hereinafter denominated the third map, being the second of the two transmitted to the corporation counsel, shall be disposed of as provided in section sixty-five of this chapter.

§ 55. Notice of intention to condemn property. The corporation counsel shall give or cause to be given notice by publication in two public newspapers published in the city, of his intention to make application to the such court that the compensation which should justly be made to the respective owners of or persons interested in the property proposed to be taken or extinguished by such proceeding be ascertained and determined by the court without a jury. Such notice shall state the time and place of such application, shall briefly state the object of the application, and shall briefly describe the property sought to be acquired or affected, and refer to a fuller statement to be filed in the office of the board of transportation, in which shall be set forth the location and boundaries of the several lots or parcels of property, and the property rights sought to be taken or affected, and a brief statement as to each of such lots or parcels, of the property rights therein or appurtenant thereto sought to be acquired or extinguished, with a reference to the dates and places of filing such maps or plans and memoranda, shall be a sufficient description of the property sought to be so taken or affected. Such notice shall be published in such newspaper twice a week for two weeks immediately previous to the time fixed in the notice for the presentation of each petition.

§ 56. Application to condemn property. After such maps shall have been filed in the office of the register or county clerk, the corporation counsel, for and on behalf of the city, shall, and he may from time to time, upon first giving the notice required by section fifty-five of this chapter, apply to the supreme court at any special term thereof, to be held in the judicial district in which such county is situated, to have the compensation which should justly be made to the

respective owners of or persons interested in the property proposed to be taken or extinguished by such proceedings ascertained and determined by such court without a jury. Upon each such application he shall present to the court a petition, signed by a majority of the members of the board of transportation and verified in the manner prescribed by law for the verification of pleadings, according to the practice of such court, setting forth the action or determination theretofore taken or had by such board with respect to the property to be acquired, and the filing of such maps or plans and memoranda, and stating the amount or valuation at which each parcel of the property to be acquired has been assessed for purposes of taxation on the tax-rolls of the city for each of the three years preceding the date of the petition, and praying that the compensation which should justly be made to the respective owners of or persons interested in the property proposed to be taken or extinguished by such proceeding be ascertained and determined by such court without a jury. Such petition shall contain a general description of all the property to, or in or over or appurtenant to which any property right is sought to be acquired, or extinguished, and of every property right sought to be acquired by the city for public purposes, each lot or parcel being more particularly described by a reference to the number of such lot or parcel as given on such maps, and the property right sought to be acquired, or extinguished, to or in or over or appurtenant to each of such lots or parcels, shall be stated in such petition.

§ 57. Procedure in case property is situated in two or more counties.

If the property to be acquired or extinguished in any proceeding be situated in two or more counties, the maps or plans and memoranda required to be filed by section fifty-four of this chapter shall be so filed in the respective offices therein provided in each county in which such property or any part thereof is situated, and the application to condemn such property may be made to the supreme court at any special term thereof held in any judicial district in which any one of such counties is situated. If the property to be acquired or extinguished in any proceeding be situated in two judicial districts the application to condemn such property may be made in either judicial district. The order

granting the application to condemn in any such proceeding shall be entered, and the final decree therein shall be filed in the office of the clerk of any one of the counties in which a part of the property to be thereby acquired or extinguished is situated, as directed by the court, and a certified copy of the order granting the application to condemn and a certified copy of the final decree shall be filed in the office in which instruments affecting real property are required to be recorded in each county in which any part of the property thereby acquired or extinguished is situated. In all other respects the proceeding shall be conducted in the same manner as a proceeding affecting property situated in only one county.

§ 58. Order granting application to condemn. At the time and place mentioned in such notice, unless the court shall adjourn such application to a subsequent date, and in that event at the time to which it may be adjourned, the court, upon due proof to its satisfaction of the publication aforesaid and upon filing the petition, shall enter an order granting the application, which order shall be filed in the office of the clerk of the county in which the property to be acquired is situated. The corporation counsel shall cause to be published in two public newspapers published in the city twice a week for two weeks a notice containing a general description of the property to be acquired or affected and requiring every owner of or person in any way interested in any property taken or extinguished in such proceeding to file with the clerk of the court of the county in which such property is situated, on or before a date specified in the notice, a written claim or demand duly verified in the manner provided by law for the verification of pleadings in an action, setting forth the property owned by the claimant and his post office address, together with an inventory or itemized statement of the fixtures, if any, for which compensation is claimed. In case such claim or demand for compensation in respect of any fixtures is made by a lessee or tenant of the real property to be acquired, a copy of such verified claim or demand, together with such inventory or itemized statement, shall be served upon the owner of such real property or his attorney. The claimant or his attorney shall at the same time serve on the corporation counsel a copy of such verified claim. The

proof of title to the property to be acquired or extinguished in all cases where it is undisputed, together with proof of liens or encumbrances thereon, shall be submitted by the claimant to the corporation counsel or to such assistant as he shall designate. Such corporation counsel shall serve on all parties or their attorneys who have served on him verified claims a notice of the time and place at which he will receive such proof of title. In all cases where the title of the claimant is disputed, it shall be the duty of the court to determine the ownership of such property upon the proof submitted to the court during the trial of the proceeding. The court shall also have power to determine all questions of title incident to the trial of the proceeding. After all parties who have filed verified claims as herein provided have proved their title or have failed to do so after being notified by the corporation counsel of the time and place when and where such proof of title would be received by him, the corporation counsel shall serve upon all parties or their attorneys who have appeared in the proceeding a notice of trial thereof and file a notice of issue with the clerk of the court of the county in which the trial is to be had. The trial shall be had in such county within the judicial district in which the property affected by the proceeding is situated as the corporation counsel shall designate in the notice of trial. The notice of trial shall be served at least ten days before, and the note of issue shall be filed at least eight days before the date for which the same is noticed for trial. The note of issue shall briefly state the title of the proceeding, the date and place of the entry of the order granting the application to condemn, the names and addresses of the parties who have filed claims, the names and addresses of their respective attorneys, and a brief statement as to the extent of the property to be acquired. The clerk of the court must thereupon enter the proceeding upon the proper calendar according to the date of the entry of the order granting the application to condemn. When notice of trial has been served and note of issue filed, the proceeding must remain on the calendar until finally disposed of. It shall be the duty of the justice trying any such proceeding to view the property to be thereby acquired or extinguished and if he shall deem a view of the property in the vicinity of the property to be acquired or extinguished necessary or useful, he shall make such view. Where title to real property being acquired in a

proceeding shall have been vested in the city, and buildings or improvements situated thereon shall have been removed or destroyed by the city or the board of transportation or pursuant to the authority of either the city or the board prior to the trial of the proceeding, and thereby the justice trying the proceeding is deprived of a view of the buildings or improvements so removed or destroyed, the fact that the justice did not have a view thereof shall not preclude the court from receiving on the trial of the proceeding testimony and evidence as to the damage sustained by the claimant by reason of the taking thereof when offered on behalf of either the claimant or the city.

§ 59. Examination before trial. A proceeding by the board of transportation to acquire title to property or any right therein for the purposes of this chapter by condemnation shall be deemed a special proceeding, in which testimony may be taken by deposition pursuant to the provisions of the civil practice law and rules and subject to the provisions of this section. Such deposition may be taken upon any question or issue in the proceeding and for the purpose of obtaining testimony as to any sale or lease as described in section sixty of this chapter, at the instance of the corporation counsel or of any owner or at the direction of the court at any time after the expiration of the date fixed for filing claims. Any owner desiring to obtain testimony by deposition shall give at least five days' notice or, if service is made through the post office, at least eight days' notice to the corporation counsel and to all other owners or their attorneys who have duly filed their verified claims. If the corporation counsel shall desire to obtain testimony by deposition he shall give like notice to all owners or their attorneys who have duly filed and served on him their verified claims. For the purpose of any such examination before trial brought on by an owner and noticed for and held at an office of the corporation counsel in the borough in which the real property is situated or at such other place as the corporation counsel shall designate, the corporation counsel, at the expense of the city, shall provide proper stenographic service and shall furnish to the owner bringing on such examination a copy of the typewritten transcript of such examination, duly certified by the officers before whom it was taken. In all other cases, the party

bringing on such examination shall at his own cost and expense provide proper stenographic service and shall furnish to the corporation counsel two copies of the typewritten transcript of such examination duly certified by the officer before whom it was taken. The deposition of a witness need not be subscribed by him, if such subscription shall be waived by the parties appearing upon his examination. The corporation counsel, at the office address subscribed by him upon the papers in the proceeding, from and after the date of his receipt thereof, shall keep on file, available for inspection by all parties to the proceeding a certified copy of each deposition taken in the proceeding.

§ 60. Trial; evidence of value. a. Upon the trial, evidence of the price and other terms upon any sale, or of the rent reserved and other terms upon any lease, relating to any of the property taken or to be taken or to any other property in the vicinity thereof shall be relevant, material and competent, upon the issue of value or damage and shall be admissible on direct examination, if the court shall find:

1. That such sale or lease was made within a reasonable time of the vesting of title in the city,

2. That it was freely made in good faith in ordinary course of business, and

3. In case such sale or lease relates to other than property taken or to be taken, that it relates to property which is similar to the property taken or to be taken.

b. No such evidence shall be admissible as to any sale or lease, which shall not have been the subject of an examination before trial either at the instance of the city or of an owner:

1. Unless at least twenty days before the trial the attorney for the party proposing to offer such evidence shall have served a written notice in respect of such sale or lease. Such notice shall specify the names and addresses of the parties to the sale or lease, the date of the

making thereof, the location of the premises, the office, liber and page of the record thereof, if recorded, and the purchase price or rent reserved and other material terms; or

2. Unless such sale or lease shall have occurred within twenty days before the trial.

Such notice by the corporation counsel shall be served upon all owners or their attorneys who have appeared in the proceeding; or if served on behalf of an owner, shall be served upon the corporation counsel and upon all other owners or their attorneys who have appeared in the proceeding. The testimony of a witness as to his opinion or estimate of value or damage shall be incompetent, if it shall appear that such opinion or estimate is based upon a sale or lease of any of the property taken or to be taken or of any of the property in the vicinity thereof, which shall not have been the subject of an examination before trial, unless it shall have been specified in a notice served as aforesaid or shall have occurred within twenty days before the trial.

c. Upon the trial, no map or plan of proposed streets, drains or sewers for the subdivision and improvement of any property, nor any drawing or other specification of excavation or filling or piling or of any other proposed structure above or under ground deemed necessary or proper to provide a foundation for a suitable or adequate improvement or of any other structure or improvement not existing on the property on the date that title thereto may vest in the city nor any oral or written estimate of cost or expense of constructing the streets, drains or sewers in conformity with such map or plan, nor any oral or written estimate of the cost of making such excavation or filling or piling or of constructing any such other proposed structure or improvement in conformity with such drawing or other specification thereof, nor any evidence of value or damage based upon any of the foregoing, shall be received in evidence, unless the party offering the same in evidence shall have served upon the adverse party, at least thirty days prior to the trial, a notice of intention to offer such evidence on the trial and of the particulars thereof, including a true copy of the map or plan or drawing and other specification and estimate of cost or expense to be so offered in evidence, provided, however, that when offered such evidence shall be subject to objection upon any legal ground.

§ 61. Order to expedite proceeding. At any time after the date of entry of the order granting the application to condemn the corporation counsel or any owner may apply to the court for an order directing any owner or the corporation counsel, as the case may be, to show cause why further proceedings under this article on the part of such owner or owners or of the corporation counsel should not be expedited, and upon the hearing directed by such order to show cause the court, in its discretion, may make an order directing that such proceedings be expedited in the manner stated therein and also making such further directions with respect to the particulars shown upon the application as shall be just and proper in the premises.

§ 62. Time when city becomes seized. Upon the date of the entry of the order granting the application to condemn, the city shall be and become seized and possessed in fee or absolute ownership of all those parcels of property and property rights which are in the maps or plans and memoranda referred to in section fifty-two of this chapter, described as parcels of property or property rights which are to be acquired, and also shall become seized and possessed of all the property rights appurtenant to any lots or parcels of property indicated on such maps or plans as parcels in regard to which it is deemed necessary to acquire such rights, or such rights shall be extinguished, as the case may be. The board of transportation, immediately or at any time thereafter, may take possession or enter into the enjoyment of such property or of any part thereof, without any suit or proceeding at law for that purpose. Such board, or any person acting under its authority, may enter upon and use, occupy and enjoy all the parcels of property and all the property rights appurtenant to any of the parcels of property and all property rights described on such maps or plans or in such memoranda, for any of the purposes authorized and provided for by this chapter. But on the entry of such order granting the application to condemn, the city shall be and become forthwith liable to the respective owners or persons interested in the several parcels of property and the several property rights appertaining thereto, and of such property

rights acquired as aforesaid, for the true and respective values thereof, together with interest thereon from the time of the entry of such order, provided, however, that no such interest shall be payable to any owner or person interested in any such property or property right during any period during which the city or such board may by any resistance, whether by legal proceeding or otherwise, of such person or with his authority, be prevented from taking possession thereof or enjoying the same.

§ 63. Partial payment of awards. In any proceeding instituted pursuant to the provisions of this chapter for the acquisition of title to property by the city, in which title thereto shall have become vested in the city by virtue of the entry of an order in compliance with section sixty-two of this chapter, the city shall be authorized to pay to the person entitled to an award for property acquired in such proceeding, in advance of the final determination of his damages, a sum equal to seventy-five per centum of the assessed valuation of such property less the liens and encumbrances of record thereon. Before any such advance payment shall be made the comptroller shall procure the certificate of the corporation counsel showing that the person to whom payment is to be made is the person legally entitled to receive the same. If the city shall authorize a partial payment in advance to any person entitled to an award, interest on the sum so authorized to be paid in advance shall cease to run five days after such person shall have been notified by mail or otherwise that the comptroller is ready to pay the same. In case the person entitled to an award at the date of the vesting of title to the property in the city shall have transferred or assigned his claim, such transfer or assignment made by him, or by his successor in interest or legal representative, shall not become binding upon the city unless the instrument evidencing such transfer or assignment shall have been executed and filed in the office of the comptroller as provided in this chapter, prior to any such advance payment. When any such advance payment shall have been made, the comptroller, on paying the awards made for the property acquired, shall deduct from the total amount allowed as compensation the sum advanced plus interest thereon from the date of the payment of such advance to

the date of payment of the final award, and the balance shall be paid as provided by this article. In case an advance payment shall have been authorized and the person entitled thereto shall have been notified by mail or otherwise that the comptroller is ready to make such advance payment, interest on the amount so authorized to be paid in advance from a date five days after notification by the comptroller that he is ready to make such advance payment to the time the person entitled thereto shall accept such advance payment, shall be deducted by the comptroller on paying the awards therefor from the total amount allowed as compensation to such person. Such advance payment shall be made in accordance with the provisions of section sixty-nine of this chapter.

§ 64. Payment of liens and encumbrances. Whenever a person would be entitled to the payment of any advance under section sixty-three of this chapter and there shall exist mortgages or other prior liens on such property, the holder of any such prior lien may apply to the city for payment of his mortgage or encumbrance. If after five days' written notice given by the corporation counsel to the owner of such property to file a verified statement of his objections, if any, to the payment of such mortgage or lien, the corporation counsel shall be satisfied as to the amount due to such mortgagee or lienor, and shall so certify, the city shall, to the extent of the moneys available under such section sixty-three, after providing for prior liens or encumbrances, if any, pay such mortgage or lien with the interest due thereon.

§ 65. Tentative decree; objections thereto. The court, after hearing such testimony and considering such proofs as may be offered, shall ascertain and estimate the compensation which ought justly to be made by the city to the respective owners of or persons interested in the property so acquired or extinguished by such proceeding for the improvement and shall instruct the corporation counsel to prepare a transcript of its estimate of damage. Such transcript of estimate shall be accompanied by the third set of maps or plans and memoranda referred to in section fifty-four of this chapter and therein denominated the third set, or a copy thereof, and shall refer to the numbers thereon and

shall state the several sums respectively estimated for each of such parcels with the names of the owners or persons interested therein as far as ascertained, together with all of the affidavits and proofs upon which the same are based. Such transcript shall be signed by the justice trying the proceeding and filed with the clerk of the county in which the property affected by the proceeding is situated and when so filed shall constitute the tentative decree of the court. Upon the filing of the tentative decree, the corporation counsel shall give notice by publication twice a week for two weeks in two public newspapers published in such city of the filing of such tentative decree and that the city and any person whose rights may be affected thereby and who may object thereto, or any part thereof, may, on or before a day to be specified in such notice subsequent to the last publication thereof, set forth his objections thereto in writing, duly verified in the manner required by law for the verification of pleadings in an action, setting forth the property owned by the objector and his post-office address, and file the same with such clerk. The notice shall also state that the corporation counsel on the date specified therein will apply to the justice who made the tentative decree to fix a time when he will hear the parties so objecting. Every party so objecting, or his attorney, within the same time, shall serve on the corporation counsel a copy of such verified objections. Upon such application the justice shall fix the time when he will hear the parties so objecting and desiring to be heard. At the time so fixed the justice shall hear each person who has objected to the tentative decree and who may then and there appear and shall have the power to adjourn from time to time until all persons who have filed objections and desire to be heard shall be fully heard.

§ 66. Final decree. After considering the objections, if any, and making any corrections or alterations in the tentative decree which the court shall consider just and proper, it shall give instructions to the corporation counsel as to the preparation of the final decree, which shall consist of the tentative decree altered and corrected in accordance with the instructions of the court, together with a statement of the facts conferring on the court jurisdiction of the proceeding, and that the amounts set opposite each parcel in the column headed "final

awards" constitute the compensation to which the respective owners of or persons in any way interested in the property taken or extinguished in such proceeding are justly entitled to receive from the city and a statement of the respective owners and interested parties. In all cases where the owners or persons interested are unknown, or not fully known to the court, it shall be sufficient to set forth and state in general terms the respective sums to be allowed and paid to the respective owners and interested parties without specifying their names or their estates or interests. The final decree shall be filed in the office of the clerk of the county where the property affected by the proceeding is situated.

§ 67. Payment of awards and expenses. Within four calendar months after the date of the filing of the final decree of the court, the city shall pay to the parties entitled thereto the respective sums of money determined in their favor as set forth in the final decree, with legal interest thereon from the date of the entry of the order granting the application to condemn. In case of neglect or default in the payment thereof within the time aforesaid, the respective persons in whose favor the same shall be so determined, after application to the comptroller for payment thereof, may sue for and recover the same, with lawful interest as aforesaid and costs of suit. No fees or expenses incurred by the city or the corporation counsel in connection with any proceeding instituted under this chapter shall be paid until they shall have been taxed by the court upon five days' notice to the corporation counsel and upon proof of the nature and extent of the services rendered and disbursements charged. No unnecessary costs or charges shall be allowed. All costs, fees, expenses or disbursements to be taxed shall be stated in detail in the bill of costs and shall be accompanied by such proof of the reasonableness and necessity thereof as is required by law and the practice of the court upon taxation of costs and disbursements in other special proceedings or actions.

§ 68. Moneys of persons under disability; moneys paid to wrong persons. Whenever the owner or any person interested in any property

taken or affected in such proceedings or in whose favor any such sum or compensation shall be determined by the final decree of the court is under legal disability or absent from such city, and when the name of the owner or person interested in the property shall not be set forth or mentioned in the final decree, or when the owner or person interested, although named in the decree, cannot upon diligent inquiry be found, or where there are adverse or conflicting claims to the money awarded as compensation, the city shall pay such award into court to be secured, disposed of, invested and paid out as the court shall direct, and such payment shall be as valid and effectual in all respects as if made to the person entitled thereto. And in default of such payment into court, the city shall be and remain liable for such award with lawful interest thereon from the date of the entry of the order granting the application to condemn. Where an award shall be paid to a person not entitled thereto, the person to whom it ought to have been paid may sue for and recover the same, with lawful interest and costs of suit, as so much money had and received to his use by the person to whom the same shall have been so paid. Payment of an award to the person named in the final decree of the court as the owner thereof or person entitled thereto, if not under legal disability, in the absence of notice in writing to the comptroller of adverse claims thereto, shall protect the city.

§ 69. Cost of acquiring property. The moneys necessary and sufficient to be paid for any property acquired in any manner under the provisions of this chapter, together with all expenses necessarily incurred in surveying, locating and acquiring title to such property, and for preparing the necessary maps and plans in connection therewith, shall be raised by the city, and all such expenses so incurred in surveying, locating and acquiring title, and for preparing necessary maps and plans, and also those incurred as provided in subdivision b of section fifty-three of this chapter, shall be deemed a part of and included in the cost of constructing the road, the construction of which rendered it necessary to acquire the property, in the course of the acquisition of which such expenses may be incurred.

§ 70. Amendments of defects. The special term of the supreme court, in the judicial district in which the property affected by the proceeding is situated, at any time may amend any defect or informality in any notice, petition, pleading, order or decree in a proceeding instituted under this chapter or cause property affected by such defect, informality or lack of jurisdiction to be excluded therefrom or other property affected by such defect, informality or lack of jurisdiction to be included therein, by amendment, upon notice published twice a week for two weeks in two public newspapers, published in such city, and may direct such further notices to be given to any party in interest as it shall deem proper.

§ 71. Appeal to the appellate division. The city, or any party or person affected by the proceeding and aggrieved by the final decree of the court therein, may appeal to the appellate division of the court. An appeal from the final decree of the court must be taken within thirty days after notice of the filing of the final decree. Except as herein otherwise provided, such appeal shall be taken and heard in the manner provided in relation to appeals from judgments in special proceedings, and such appeal shall be heard and determined by such appellate division upon the merits both as to matters of law and fact. The determination of the appellate division shall be in the form of an order. But the taking of an appeal by any person shall not operate to stay the proceedings under this chapter, except as to the particular parcel of property with which the appeal is concerned. The final decree of the court shall be deemed to be final and conclusive upon all parties and persons affected thereby who have not appealed. Such appeal shall be heard upon the evidence taken by the court, or such part or portion thereof as the court may certify or the parties to the appeal may agree upon as sufficient to present the merits of the questions in respect to which such appeal shall be had. An appeal taken but not prosecuted within six months after the filing of the notice of appeal, unless the time within which to prosecute the same shall have been extended by the court, shall be deemed to have been abandoned, and no agreement between the parties extending the time within which the appeal may be prosecuted shall vary the provisions hereof.

§ 72. Appeal to court of appeals. An appeal to the court of appeals may be taken by the city or any person or party interested in the proceeding and aggrieved by the order of the appellate division. Such appeal shall be taken and heard in the manner provided in relation to appeals from judgments in special proceedings. An appeal taken but not prosecuted within six months after the filing of the notice of appeal, unless the time within which to prosecute the same shall have been extended by the court, shall be deemed to be abandoned and no agreement between the parties to the appeal extending the time to prosecute the same shall vary the provisions hereof. The court of appeals may affirm or reverse the order appealed from, and may make such order or direction as shall be appropriate to the case.

§ 73. Property deemed acquired for public use. All property acquired under the provisions of this chapter shall be and shall be deemed to have been acquired for public uses and purposes, and for the purpose of affording increased facilities for rapid transit between points within the city acquiring such property.

ARTICLE VII

CONNECTION, EXTENSION AND RELOCATION OF RAILROADS WITHIN THE CITY OF NEW YORK

Section 80. Connecting routes and extension of lines.

81. Connection with other railroads or transit facilities.

82. Relocation of railroads.

§ 80. Connecting routes and extension of lines. a. The commission, from time to time, with the approval of the board of estimate and of the mayor may grant a right or franchise or enter into a contract, upon application to such commission of any railroad corporation for the purpose of constructing and operating a tunnel railroad from an adjoining state under the North or Hudson or Harlem river to a terminus

within the city; or under the North or Hudson river and thence transversely across and under the surface of the borough of Manhattan and thence under the East river by the shortest practicable route; such railroad to be connected with some trunk line railroad whose terminus is in this or an adjoining state, thereby forming a continuous line for the carriage of passengers and property.

b. A similar grant may be made, or a similar contract entered into, upon the application of a railroad corporation, owning or actually operating a trunk line railroad whose terminus is within the city, or of a railroad corporation owning or actually operating, or by the certificate of the commission required to own or actually operate, a railroad wholly or partly within such city and engaged or intended, and in such certificate so recited and required, to be, in interstate commerce in connection with a trunk line railroad and which shall have, or be required by such certificate to have a terminus in such city, for the purpose of constructing and operating a railroad from such terminus by the shortest practicable route to and under or over the East river or the North or Hudson river, or the Harlem river, to any point in this or an adjoining state, or to connect such terminus with the railroad or terminus of any other such railroad or trunk line railroad in this state or to straighten or improve the grade or alignment of any such railroad or more directly connect any points thereon.

c. If and when in the judgment of such commission the public interests so demand, the commission, with like approval, may fix and determine the route by which any such railroad corporation making such application may so establish and construct or so extend its lines into or within such city, and may authorize any such railroad corporation to construct and operate any such railroad or connecting railroad under any streets, and also in the case of any such railroad or connecting railroad which is, or by the terms of such certificate is required to be, operated or used as a part of an interstate trunk line, to construct and operate the same over and across any such streets, but not over and lengthwise of any streets, with all necessary devices and appurtenances and with the right to emerge to the surface upon private lands at the termini, and to transport over the same passengers or freight or both and to run over

the same either passenger trains or freight trains or mixed trains.

d. The commission, with like approval, shall fix and determine the locations and plans of construction of the railroad upon such route, the times within which portions thereof shall be constructed, the compensation to be made therefor to the city by the railroad corporation to which the grant shall be made, or with which the contract shall be entered into, and such other terms, conditions and requirements as to the commission may appear just and proper. Every such grant shall be made and every such contract entered into, however, upon the condition that the railroad corporation to which the grant shall be made or with which the contract shall be entered into, from the time of the commencement of the operation of any such railroad, shall annually pay to such city a sum or rental. The amount of such sum or rental for a period of not more than twenty-five years, beginning with such operation of any such railroad, shall be prescribed by the commission in such grant or contract. Every such grant or contract shall provide for the readjustment of the amount of such sum or rental at the expiration of the period for which it shall be so prescribed and for readjustment from time to time in the future of the amount of such annual payment at intervals each of not more than twenty-five years. The grant may also provide that the city shall have the right after the expiration of a period fixed in the grant which shall not be more than twenty-five years from the date on which operation of any portion of such railroad shall commence to purchase and take the right or franchise so granted and any tunnel and railroad, thereby authorized, or any portion of such tunnel and railroad, provided the city shall determine that such tunnel and railroad or such portion of such tunnel and railroad is necessary or desirable for use as part of some municipal system of rapid transit to be owned by the city, upon giving a specified notice and upon payment of the value of such tunnel and railroad, or portion of tunnel and railroad, but not including the franchise thereby granted, nor to exceed the actual cost in money of construction thereof and of property connected therewith. The grant may provide in default of agreement thereon for ascertainment and determination by arbitration or by the court of the amount to be paid by the city therefor. Any certificate granted by the board of rapid transit railroad commissioners or by the

public service commission before the twenty-sixth day of May, nineteen hundred nine authorizing the construction and operation of any tunnel and railroad under the provisions of this section, and any right theretofore given to the city in or by any such certificate so granted to purchase and take any tunnel and railroad, or any portion of such tunnel and railroad shall be deemed to have been authorized, and every such certificate is hereby ratified and confirmed as to such right given thereby.

e. A certificate shall be prepared by the commission attested by its seal and the signature of its presiding officer, setting forth in detail the action taken and grant made or contract entered into by the commission with respect to such railroad and the terms, conditions and requirements aforesaid, including provisions as to such annual payments and the future readjustments thereof. A like certificate shall be prepared in like manner upon every modification of the terms of the grant or contract as provided in this chapter. Each such certificate shall prescribe the terms and conditions of the readjustments of such annual payments and may provide for the determination of such amount upon such readjustments by arbitration or by the supreme court. Such certificate shall be delivered to such railroad corporation upon the receipt by such commission of a written acceptance of the terms, conditions and requirements of the grant or contract, duly executed by such railroad corporation, so as to entitle it to be recorded.

f. Such certificate shall be filed in the office of the secretary of state, and a duly certified copy thereof shall be filed in the office of the clerk of each county in which such railroad is situated, and thereupon, and upon fulfillment by such railroad corporation, so far as it relates to such railroad, of such of the requirements and conditions as are necessary to be fulfilled in such cases, under section seventeen of article three of the constitution, and upon fulfillment by such railroad corporation of such other terms, conditions and requirements enumerated in such certificate, as the commission may require to be fulfilled as a condition precedent to commencing such work, such railroad corporation shall in such cases possess in addition to its already existing franchises all the powers conferred by this chapter

upon corporations with respect to its railroads authorized to be constructed as aforesaid. When any routes, rights or franchises, shall be so fixed and determined, and a certificate as aforesaid shall have been duly filed, such railroad corporation may construct the same with all the rights and with like effect as though the same had been a part of the original route of its railroad then in actual operation, or as may be provided in such certificate, but in every case subject to all the provisions and conditions of such certificate. Every certificate prepared by the commission or any of its predecessors as aforesaid when delivered to and accepted by such railroad corporation, shall be deemed to constitute a contract between such city and such railroad corporation, according to the terms of such certificate. Such contract shall be enforceable by the commission acting in the name of and in behalf of such city or by such corporation according to the terms thereof, but subject to the provisions of this chapter. The terms of such contract, from time to time, with like approval and with the consent of such corporation, may be modified by the commission.

g. But the construction and operation of such railroad is authorized only upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the board of estimate and the mayor be first obtained, provided that such board of estimate and mayor, upon the presentation to them of any such grant or contract, without requiring the execution of any other agreements than those herein provided for, shall either approve or disapprove the same. Every such approval shall be and be deemed to be, free of all limitations except those contained in this chapter or the constitution. In case the consent of such property owners can not be obtained, the appellate division of the supreme court in the department in which such railroad is proposed to be constructed, upon application, in the same manner and on the same notice specified in section twenty-one of this chapter, may appoint three commissioners, who shall determine after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of such property owners.

h. No grant or contract shall be made hereunder affecting in any way

the liabilities and obligations of the grantee or contracting railroad corporation with reference to taxation for state or local purposes. The state shall not be liable for injuries to persons or property in connection with any railroad or other construction which may be authorized under the provisions of this chapter, nor shall the state be liable for any damages in any event for any act or omission of the commission.

§ 81. Connection with other railroads or transit facilities. a. The commission, from time to time, with the approval of the board of estimate and the mayor, upon application of any person owning, leasing, constructing or actually operating or having the right by contract to thereafter operate a railroad wholly or in part within the limits of the city, if in the judgment of such commission, the public interests so demand, may also fix and determine the route by which any such person may connect with other railroads, or the stations thereof, or with ferries or bridges, or may extend any line which he operates or has the right to operate as aforesaid within such city, or upon the application of a corporation organized under the railroad law for any of the purposes specified in subdivision 1 of section forty of this chapter, and agreeing to equip, maintain and operate or to procure to be equipped, maintained and operated, any road of the city in connection with any existing railroad of a railroad corporation and any extension thereof wholly within such city, on the basis of a division of income, earnings or profits as herein provided, the commission with like approval, if in its judgment the public interests so demand, may fix and determine the route by which such person may construct, maintain and operate such extension, and with like approval, may authorize such person to construct, maintain and operate any such extension, and may with like approval authorize any such person to lay an additional track on, above, under or contiguous to a portion or the whole of the route of his railroad within such city and to acquire terminal or other facilities necessary for the accommodation of the traveling public on any street except the place known as Battery Park on which such railroad shall be located. The commission, with like approval, may also authorize any such person to lay his tracks and operate his railroad to

any terminal within such city, and to transport thereover passengers or freight or both, and to run either passenger trains or freight trains or mixed trains thereover. The commission, with like approval, shall fix and determine the locations and plans of construction of the railroads upon such facilities, the times within which they shall be respectively constructed, the compensation to be made therefor to the city by such person, and such other terms, conditions and requirements as to such commission and board of estimate with the approval of the mayor may appear just and proper. Every such determination, authorization and license shall be made upon the condition that such person, from the time of the commencement of the operation of any such railroad under such determination, authorization or license, shall annually pay to such city a sum or rental which may be a part or proportion of gross or net receipts, and that the amount of such sum or rental for a period of not more than twenty-five years, beginning with such operation of any such railroad shall be prescribed by the commission in such determination, authorization and license, and that every such determination, authorization and license shall provide for the readjustment of the amount of such sum or rental at the expiration of the period for which it shall be so prescribed and for readjustment from time to time in the future, to the end of the period of renewal, if any, of the amount of such annual payment at intervals each of not more than twenty years. Such determination, authorization or license may provide that for the whole or any portion of the life of the grant in lieu of such annual rental the gross or net receipts derived from the operation of such railroad owned, operated or to be operated by such person within the limits of such city, and from the operation of such connecting or extending facilities may be combined, and that the city may receive as such compensation at intervals named a specified part or proportion of the income, earnings or profits of the railroad, and the facilities whose receipts are so combined or of those and any other railroads which may be operated in connection therewith in like manner, which part or proportion may be deferred to a previous distribution to such person, which distribution may be cumulative. In such case such determination, authorization or license may apportion out of the amount so to be received by the city and shall specify a portion thereof which shall be deemed to be the rental for the use of such facilities. Such

determination, authorization or license shall also provide for determining the amount of the income, earnings or profits of the railroad within the limits of the city and of the facilities whose receipts are so combined. It may also provide for readjustment of the proportion which the city shall receive or of the portion thereof which shall be deemed to be the rental for the use of such facilities at specified intervals. In addition, it may prescribe a method of determining by arbitration or by the court the amount which the city shall receive as its proportion of such income, earnings or profits or as such rental upon any such readjustment thereof. Such determination, authorization or license shall contain a reservation to the city of the privilege, upon giving a specified notice, to terminate the franchise, right or authority granted under this section as to all, and, if deemed advisable, as to any specified portion of such facilities, and to purchase and take the plant and property as defined in the grant at any time after the expiration of ten years from the date when operation of any part of such facilities or of such specified portion thereof shall actually begin, upon paying an amount for such plant and property as property, excluding any value for the franchise, right or authority, which amount shall not exceed actual cost as defined in the grant of such plant and property plus fifteen per centum thereof. Such amount shall decrease under provisions of the grant as the franchise continues, so that at the end of the full term of the grant or at the end of a period specified therein, no amount shall be paid except for betterments, additions, improvements and additional equipment as hereinafter provided. The grant shall provide a method of ascertaining the amount to be paid for such plant and property on termination by the city of such franchise, right or authority and for the betterments, additions, improvements and additional equipment at the end of the full term of the grant. The grant may provide for determining, from time to time in default of agreement by arbitration or by the court, a valuation of such plant and property or any part or portion thereof for any purpose under such grant. Such determination, authorization or license may also make suitable provision to the end that if the city, after so terminating such franchise, right or authority or at the end of the full term of the grant shall propose to give a new franchise, right or authority in the enjoyment of which such plant and property or any part

thereof may be utilized, the title to and possession of such plant and property or any part thereof may be transferred directly to the grantee of any such new franchise, right or authority when such new grantee shall pay the amount so required. In the case of additional track added to any elevated rapid transit railroad, however, the determination, authorization or license may provide that such privilege of the city to terminate the franchise, right or authority therefor and to purchase and take the plant and property shall not be for railroad transit operation either by the city or by any other party, and shall be without prejudice to the rights of such person in the lines of such existing elevated railroad, and may make adequate provision for the protection of such rights. The commission, with like approval may authorize the re-location of any devices and appurtenances of such person in any street in which they exist, any such re-located structure to be held under all the terms and privileges of the original franchise.

b. A certificate shall be prepared by the commission, attested by its seal and the signature of its presiding officer, setting forth in detail the action taken by the commission with respect to such connecting or extended facilities, and the terms, conditions and requirements aforesaid, including provisions as to such annual payments and the future readjustments thereof. A like certificate shall be prepared in like manner upon every modification of the terms of the contract as provided in this chapter. Every such certificate shall prescribe the terms and conditions of the readjustments of such annual payments and may provide for the determination of such amount upon such readjustments by arbitration or by the supreme court. Such certificate shall be delivered to such person upon the receipt by such commission of a written acceptance of such terms, conditions and requirements, duly executed by such person so as to entitle it to be recorded.

c. Such certificate shall be filed in the office of the secretary of state, and a duly certified copy thereof shall be filed in the office of the clerk of each county to which such privileges granted hereunder pertain, and thereupon, and upon fulfillment, by such person so far as it relates to such facilities, of such of the requirements and conditions as are necessary to be fulfilled in such cases, under section

seventeen of article three of the constitution. Upon fulfillment by such person of such other terms, conditions and requirements enumerated in such certificate, as the commission may require to be fulfilled as a condition precedent to commencing such work, such person shall in such cases possess in addition to existing franchises all the powers conferred by this chapter upon corporations with respect to his railroads authorized to be constructed as aforesaid. When any facilities, shall be so fixed and determined, and a certificate as aforesaid shall have been duly filed, such person may construct them with all the rights, and with like effect as though they had been a part of the original route of his railroad then in actual operation or in process of construction. A franchise, right or authority shall not be granted under this section to extend any railroad, make any connections, lay any additional track or acquire any terminal or other facilities for a longer period than the unexpired term of the original grant, franchise or contract of the railroad and any renewal thereof contained in such contract to which such facilities are added. Any such franchise, right or authority granted hereunder shall also be subject to be terminated by the city in like manner and under the same terms and conditions and at the same time as may be provided in such original grant for the termination or taking by the city of that grant if provision therefor be made.

d. The certificate prepared by the commission as aforesaid when delivered and accepted by such person shall be deemed to constitute a contract between such city and such person according to the terms of such certificate. Such contract shall be enforceable by the commission acting in the name of and in behalf of such city or by such person according to the terms thereof, but subject to the provisions of this chapter. The terms of such contract, from time to time with the consent of such person, may be modified by the commission. In the case of any grant under this section for the extension of any railroad or the making, laying or acquisition of facilities under the provisions of this section, the commission may make provision as a condition of such grant for the termination by the city of the original grant or franchise or contract, for the railroad to which such facilities are to be added and for the taking over at the same time of the plant and property of the

grantee or holder of such original franchise or contract suitable to and used for the purpose of such original grant or contract in connection with the termination of the franchise, right or authority granted under this section, upon giving a specified notice and paying an amount for such plant and property, as property, excluding any value for the original franchise or contract, which amount shall not exceed actual cost of such plant and property plus fifteen per cent. thereof. Such amount shall decrease under the provisions of the grant made hereunder as the franchise or contract continues, so that at the end of the grant or contract no amount shall be paid except for equipment as defined in the grant. The grant shall provide a method of ascertaining the amount to be paid for such plant and property on termination by the city of such original franchise or contract or for equipment at the end of the full term thereof. The grant may provide for determining from time to time in default of agreement by arbitration or by the court a valuation of such plant and property or any part or portion thereof for any purpose under such grant. The grant in such case may also make suitable provision to the end that if the city shall after so terminating such original grant or franchise or at the end of the full term thereof propose to grant a new franchise, right or authority in the enjoyment of which such plant and property or any part thereof may be utilized, the title to and possession of such plant and property or any part thereof may be transferred directly to the grantee of any such new franchise.

e. But the construction and operation of such facilities are hereby authorized only upon condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the board of estimate and of the mayor be first obtained, or in case the consent of such property owners cannot be obtained, the appellate division of the supreme court in the department in which they are proposed to be constructed, upon application, in the same manner, and on the same notice specified in section twenty-one of this chapter, may appoint three commissioners who shall determine after a hearing of all the parties interested whether such facilities ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.

f. Every such certificate granting any franchise, right or authority, as aforesaid, except for additional track added to any elevated rapid transit railroad, shall provide that upon the expiration of a period fixed therein the franchise shall end and that upon such termination thereof all the rights of property of the grantee in the streets shall cease and terminate without compensation and shall further provide that upon such expiration of such franchise, right or authority the plant and property together with the appurtenances thereto, of the grantee, constructed pursuant to such certificate, except betterments, additions, improvements and additional equipment as defined in the grant, shall become the property of the city without further or other compensation to the grantee; and that such betterments, additions, improvements and additional equipment shall be and become the property of the city on paying the grantee the amount ascertained as provided pursuant to such certificate. The provisions of this section shall apply to any railroad constructed, constructing or contracted for under the provisions of section thirty-one of this chapter and to any person constructing or operating any such railroad.

§ 82. Relocation of railroads. a. Upon application of any person owning a railroad wholly or in part within the limits of the city, the commission, if in its judgment the public interests so demand, with the approval of the board of estimate and the mayor, may fix and determine the route upon which such person may relocate its railroad, or some specified portion thereof, including devices and appurtenances. The commission shall fix and determine the location and plan of construction of such railroad or portion thereof as so relocated upon such new route, the times within which it shall be constructed upon such new route, and such other terms, conditions and requirements as to such commission shall appear just and proper for the exercise of the franchise of such person upon such new route. Such railroad or portion thereof with the devices and appurtenances when so relocated shall be held by such person under the terms and privileges of his franchise except as may be otherwise specified and agreed in such grant, in place of the railroad or portion thereof as it existed prior to such relocation. Such railroad

or portion thereof theretofore existing prior to such relocation shall thereupon be removed and all right to hold, maintain or operate it upon the former route, except the portion if any thereof not so relocated, shall cease. Provided, however, that the construction and operation of such railroad or portion thereof as so relocated upon the new route, fixed and determined by the commission as aforesaid, are authorized only upon condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the board of estimate and the mayor, be first obtained. In case the consent of such property owners cannot be obtained, the appellate division of the supreme court in the department in which such relocation is proposed, upon application in the same manner and on the same notice, specified in section twenty-one of this chapter, may appoint three commissioners who shall determine after a hearing of all the parties interested whether such proposed relocated railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.

b. As part of the consideration for surrender by such person of any and all right to maintain and operate its railroad or portion thereof and the structures therefor upon any street in its existing route and the grant of the right to relocate, the grant may provide that the expense of taking away the structure and restoring the streets and of reconstructing the structure in the new location, including the acquisition of property necessary therefor, shall be borne by the person or by the city or partly by the such person and partly by the city. The grant may provide as to the amounts of contributions therefor and by whom and at what time such contributions shall be made. The grant may also provide as to the measure of compensation to be made for existing railroad rights and structures and for such new rights and structures acquired under such grant or for either thereof, and the manner of paying for them, as to the mode and manner of making and carrying into effect such relocation and the conditions upon which it is to be done and how and when it shall take place and be completed and fix the details incident and necessary to the removal, abandonment or rebuilding of the old structure or any part thereof. If the public interests, in the opinion of the commission shall justify the provisions, the grant

may provide that the construction of any part of the railroad or portion thereof so relocated upon such new route included in such grant, with the consent of the commission, may be suspended during the term of such grant or any part of such term, provided that during such term or part of term there shall be available for use, in lieu of such part of the railroad or portion thereof, a railroad or a portion of a railroad which, with the part of the railroad or a part of the portion of the railroad relocated and constructed under such grant, shall form a continuous and convenient route.

c. The grant may provide that in case the necessary consents have been obtained the city shall itself in whole or in part construct, or shall in whole or in part equip, the railroad or portion thereof as relocated upon such new route, and in such case the commission, acting for and on behalf of the city, as soon as such consents where necessary have been obtained, with the approval of the board of estimate and the mayor, may enter into a contract with any person which, in the opinion of the commission, may be best qualified to carry out such contract for the construction or equipment of such railroad or portion thereof, or such part of such construction or equipment, for such sum of money to be raised and paid out of the treasury of such city as provided in this section and upon such terms and conditions as the commission shall determine to be best for the public interests. The commission, in its discretion, by separate contracts executed from time to time or at the same time, may contract with one or more persons for the performance of any kind of work or any portion of the work, or for the furnishing of any material, or for the performance of any labor necessary for or incidental to the construction or the equipment of such railroad or portion thereof so relocated, or any part thereof, which, under the terms of such grant, the city may be under obligation to construct or equip.

d. For the purpose of constructing or of equipping such railroad or portion thereof as relocated, for the construction or equipment of which a contract shall have been made by the commission as aforesaid, and for the operation thereof when constructed, the commission for and on behalf of the city may acquire by conveyance or grant to such city, or by

condemnation or other legal or other proceedings, any and all property which in the opinion of the commission it shall be necessary to acquire or extinguish for the purpose of constructing, equipping or operating such railroad or portion thereof, free of interference or right of interference, in the same manner and to the same extent and with like power and authority as provided in this chapter with reference to the acquisition of property for the constructing or operating of any railroad for the construction or operation of which a contract shall have been made under section thirty-one or section forty of this chapter.

e. For the purpose of providing the necessary means for the construction or equipment by the city of any part of any railroad or portion thereof relocated upon any such new route and the necessary means to pay for property rights which shall be acquired by the city for the purposes of the construction or the equipment or for the operation of such part of any railroad or portion thereof relocated upon such new route hereunder the city, from time to time, and as the same shall be necessary, and upon the requisition of such commission, shall make funds available therefor and the proceeds of the same shall be paid out and expended for such purposes upon vouchers certified by such commission. No contract for the construction or equipment of any part of such railroad or portion thereof to be so relocated upon such new route shall be made unless and until the city shall have consented thereto and prescribed a limit to the amount of money available for the purposes of this section which shall be sufficient to meet the requirements of such contract in addition to all expenses theretofore incurred and to be satisfied from such money.

f. A certificate shall be prepared by the commission, attested by its seal and the signature of its presiding officer, setting forth in detail the action taken by the commission with respect to such relocation of such railroad or portion thereof and the terms, conditions and requirements aforesaid. A like certificate shall be prepared in like manner upon every modification of the terms of the contract. Such certificate shall be delivered to such person upon the receipt by such commission of a written acceptance of such terms, conditions and

requirements duly executed by such person so as to entitle it to be recorded. Such certificate shall be filed in the office of the secretary of state, and a duly certified copy thereof shall be filed in the office of the clerk of each county to which the privilege granted thereunder shall pertain.

g. Upon the filing of such certificate and upon fulfillment by such person, so far as it relates to such relocation of such railroad or position thereof of such of the requirements and conditions as are necessary to be fulfilled in such cases under section seventeen of article three of the constitution, and upon fulfillment by such person of such other terms, conditions and requirements enumerated in such certificate as the commission may require to be fulfilled as a condition precedent to commencing such work, such person, in such cases, shall possess in addition to its already existing franchises all the powers conferred by this chapter upon corporations with respect to the railroads authorized to be relocated as aforesaid. When any route for the relocation of such railroad or portion thereof shall be so fixed and determined, and a certificate as aforesaid shall have been duly filed, such person may construct such railroad or portion thereof upon such new route, with all the rights and with like effect as though the same had been a part of the original route of such railroad then in actual operation, except as may be otherwise provided in such certificate. A franchise, right or authority shall not be granted under this section to relocate any railroad or portion thereof for a longer period than the unexpired term of the original grant, franchise or contract of the railroad, and any renewal thereof contained in such contract, as to which railroad or portion thereof such relocation may be authorized. Any such franchise, right or authority granted hereunder shall also be subject to be terminated by the city in like manner and under the same terms and conditions and at the same time as may be provided in such original grant or contract for the termination or taking by the city of that grant, if provision therefor be made thereunder.

h. Such certificate when delivered and accepted by such person, shall be deemed to constitute a contract between such city and such person according to the terms of such certificate. Such contract shall be

enforceable by the commission, acting in the name of and in behalf of such city, or by such person according to the terms thereof, but subject to the provisions of this chapter. The terms of such contract, from time to time, with the consent of such person, may be modified by the commission.

i. A grant, certificate or contract resulting therefrom, or any modification thereof, shall be invalid unless first approved by the board of estimate and the mayor.

j. Whenever any railroad or portion thereof is to be removed from any street and relocated on property, including existing railroad tracks, structures, equipment, and appurtenances thereof, acquired by and belonging to the city or held by or for it and used for bridge, bridge approach, plaza or railroad or other purposes, the provisions of this section shall be applicable to such removal and relocation.

Notwithstanding the provisions of any charter or administrative code of such city or of any other act or law general, special or local or of any local law of such city, any and all property rights in such property including existing railroad tracks, structures, equipment and appurtenances thereof constructed thereon or to be constructed thereon under any such plan for such relocation may be granted under and in accordance with the provisions of this section as may be necessary or convenient to carry out such relocation in accordance with the terms of such grant.

ARTICLE VIII

PLAN FOR UNIFICATION

Section 90. Commission to prepare plan.

91. Procedure under plan.

92. Approval of contracts to effectuate plans.

§ 90. Commission to prepare plan. a. The commission after making the necessary studies and investigations shall prepare a plan for the relief of the emergency which is hereby declared to exist, and for the

improvement of transit in any such city. Such plan shall contain provisions which in the judgment of the commission, will accomplish as nearly as may be the following purposes:

1. The acquisition and unification, under public ownership or control, of railroads by purchase and direct conveyance or transfer, or by lease, recapture, assignment of lease, modification or extinguishment of existing contract or by contracts for equipment, maintenance and operation or maintenance and operation, by or under supervision of a board of transportation, or partly by one of such methods and partly by one or more of the others, so that service thereon may be increased, extended and improved to the fullest extent possible,

2. The receipt as soon as practicable by the city of net revenues from the operation of the railroads which will be applicable to the payment of interest and amortization charges on corporate stock or bonds of the city after deduction of all expenses of maintenance and operation, reserves for depreciation and otherwise, interest and amortization charges and other deductions as may be provided in a plan or in any contract or lease made in pursuance of its provisions, and

3. The assuring to the people of the city the continued operation of the railroads at the present or lowest possible fares consistent with their safe and economical operation and the performance by the board of its obligations under any plan and under any lease or contract made in pursuance of its provisions.

In case a plan or any amendment thereof or supplement thereto or separate plan adopted with the approval of the board of estimate of the city as provided in this article, shall include any street surface railroads, it may also include any stage coach or omnibus lines, together with the plant, property and equipment thereof, owned or operated in conjunction with, or as a part of the same system as, such street surface railroads.

b. The commission shall include in the plan appropriate provision for the protection of tort creditors; and shall provide for the continuance in original or modified form of any existing plan or provision of railroad companies for employees' pension and sick benefit relief, but

such continuance shall in no manner or form impair the actuarial status or benefits of employees who are members of the New York city employees' retirement system. Without limiting the authority and discretion of the commission, it may consider the incorporation in the plan of provisions whereby the title to such railroads as are not already owned by the city and whose ownership thereby is deemed by the commission to be desirable may be vested in the city and whereby rights under existing contracts for the construction, equipment and operation of rapid transit railroads already owned by the city may be acquired by the city. Such title and/or such rights may be vested in the city directly or may first pass through an intervening corporation and then to the city, either free and clear of liens and encumbrances or subject to specified liens and encumbrances, in return for a lease or leases by the city of such railroads and of any other railroads owned by it and such other or additional considerations as the commission may determine with the approval of the board of estimate. In the event of the incorporation of such provisions in the plan the commission shall outline an arrangement whereby outstanding securities of the railroad companies may be retired by application of the amounts paid by the city for the railroads acquired and whereby such securities may be amortized or otherwise paid. Any railroad company included in the plan, with the consent of the holders of record of at least two-thirds of its outstanding shares of stock entitled to vote thereon, given as provided in section one hundred forty-eight of the railroad law, may transfer and convey its property, appurtenances and franchises, or any part thereof, to the city and/or such intervening corporation as provided in the plan, subject, however, to the rights of appraisal of the shares of any dissenting stockholder as provided in section one hundred sixty-one of the railroad law. Any railroad company included in a plan whose entire outstanding capital stock or whose railroad facilities are acquired by the city as provided therein may be dissolved without judicial proceeding in the same manner as provided in and subject to the same provisions as contained in section one hundred five of the stock corporation law with respect to the dissolution of stock corporations, and upon filing the certificate of dissolution in the office of the secretary of state, titles to and ownership of the railroad, franchises, properties and assets of such railroad company shall pass to and vest in the city. The certificate of

dissolution of any such railroad company shall bear endorsed thereon, in addition to the consent of the state tax commission, the approval and consent of the commission to the filing of such certificate.

c. In connection with the preparation of any plan the commission shall cause a valuation to be made of the railroads, properties and interests therein, including leases and leasehold interests and outstanding contracts the assignment to or cancellation of which by the city may be deemed advisable but excluding franchises and going value, of the railroad company or railroad companies it proposes to include therein. Any such valuation including the value of contracts acquired may be in such detail and include such elements of cost or value and be made in such manner as the commission from time to time may determine and prescribe, with due regard to the past, present and estimated prospective earnings of such railroads, properties and interests at the rate of fare that the railroad company prior to April twenty-seventh, nineteen hundred twenty-one was entitled to charge under the provisions of the contracts or franchises under which such properties are operated or held or of any lawful order then in force fixing or regulating rates of fare, or under existing law, and in view of the competition of other lines and with due regard to all other pertinent facts and conditions; but such valuation shall not in any case exceed the fair reproduction cost of such properties less depreciation, and, in the case of leasehold interests and contracts to be assigned, acquired or cancelled, the fair value of any such leaseholds and contracts. Any such valuation as finally determined by the commission may be the basis for the inclusion of such railroads, properties, contracts and interests in the plan and for fixing the allowances and returns on account thereof under the plan and under any leases or contracts made in pursuance of its provisions.

d. In connection with the preparation of the plan the commission may include in the plan provision for railroads operating between a point within the city and a point without the city and connecting railroads whose lines stop at or near the city line. The plan may also include, in addition to and in conjunction with the railroad of a railroad company included therein, a railroad owned by the city and/or a railroad leased or to be leased by the city from the owner or lessee of such railroad.

§ 91. Procedure under plan. a. Upon the completion of such plan, but before final adoption thereof, the commission shall hold a public hearing thereon at which citizens shall be entitled to appear and be heard. The commission shall transmit a copy thereof to the board of estimate of the city and to each of the railroad companies which owns, leases or operates any of the railroads included therein with a request for the statement of the views of such board of estimate and such railroad companies thereon. Such board of estimate and each such railroad company may transmit such views and be heard thereon within a period of time to be prescribed by the commission. Thereafter the commission, from time to time, may make such changes in or modifications of such plan as the commission in its discretion may deem to be advisable. The commission shall then formally adopt the plan and call upon each of the railroad companies which owns, leases or operates any of the railroads included therein or whose leasehold, contract or other interests are to be acquired to inform it within a period of time to be fixed by the commission whether it accepts such plan. Any such plan as formally adopted by the commission may provide that the commission, with the approval of the board of estimate, from time to time, shall determine whether and when a sufficient amount of the securities to be adjusted have been deposited under or have otherwise assented to the plan to render it advisable to declare the plan operative, and in such latter event the plan shall not be or become operative until so declared by the commission with the approval of the board of estimate. If the railroad companies or one or more of them do so accept, or if in the judgment of the commission a sufficient number of them so accept as to justify carrying out the plan, and if the board of estimate also approves the plan, and the plan is or is declared operative in accordance with its terms, the board of estimate shall take all such action as may be necessary or convenient to carry out the plan. All deeds, assignments or surrenders of leaseholds and contracts and other interests, leases, mortgages, contracts and other documents shall be approved by the commission.

b. The plan may include all the railroads or systems of railroads and

controlling or leasehold interests therein which the commission decides should be included thereunder or may in the first instance include one or more railroads or systems of railroads, or controlling or leasehold interests therein and may thereafter, with the approval of the board of estimate be amended or supplemented at any time or from time to time, either before or after the completion thereof, to include one or more additional railroads or systems of railroads, or controlling or leasehold interests therein as the commission may decide, or there may be several plans each comprising different railroads or systems of railroads. The commission, if in its judgment such action is necessary, but only after a public hearing, and with the consent of the board of estimate and of each railroad company whose railroads or interests therein are included therein, from time to time may modify such plan after formal adoption thereof. The commission may further extend any period of time prescribed in this article or by it thereunder with like authority.

c. The grant of power herein conferred shall embrace, and the words "the railroad" as used herein shall be deemed to embrace, contracts and leases for the use and operation of railroads, including existing contracts and leases between the city and a railroad company for the construction, equipment, maintenance and operation of railroads under this chapter; provided, however, that the acquisition of any such contract so made by the city or its transfer to the city shall not operate as a merger or cancellation of such contract, unless otherwise provided in the plan, but such contract may be held in trust by the city for the beneficiaries thereunder, including the city, as provided in the plan until such time as the obligations in respect thereto under the plan shall have been discharged.

e. Railroads and interests therein may be acquired by the city subject to all or any mortgages that may be existing thereon. In the event that railroads or interests therein are acquired in whole or in part subject to existing mortgages, all the obligations of any mortgage subject to which the railroads are acquired in its discretion, may, and if required by the terms of such mortgage, shall be assumed by the city, provided, that any such acquisition and assumption shall in no respect increase,

diminish, alter or otherwise affect any rights vested in the trustee or the bondholders under any such mortgage.

f. The plan and any contract, lease or mortgage made in pursuance thereof may contain such other terms, conditions and covenants, not inconsistent with this article, as the commission or board of estimate shall deem to be necessary or advisable, including provision whereby elevated railroads or portions thereof acquired by the city may be removed under arrangements between the mortgage trustees and the board of estimate.

g. After the approval of such plan, as provided in this section, and thereupon, if the plan is or is declared to be operative in accordance with its terms, the board of estimate may consummate the transaction by the execution and delivery of the deeds of conveyance and instruments of transfer, leases, mortgages, contracts and all other instruments and documents, necessary or advisable for carrying the plan into effect which shall be approved by the commission.

h. All the provisions of this article and all powers hereby granted with reference to railroads and properties and interests therein shall likewise apply with equal force and effect to recaptured railroads; provided, however, that nothing contained in this article with respect to recapture or recaptured railroads shall alter or affect any rights or remedies of the city or of any railroad company under any existing contract.

i. If, pursuant to a plan, the city shall become the owner or holder of securities of a corporation owning the railroads to be acquired under the plan, or the securities of a corporation holding the securities of such owning corporation, or securities to which such railroads are subject, such securities shall be delivered into the custody of the comptroller of the city. The city, acting by the board of estimate or by such person as the board of estimate may designate, may exercise such powers with respect to such securities as might any other holder hereof.

§ 92. Approval of contracts to effectuate plans. Anything contained in this article to the contrary notwithstanding, the commission shall not execute and deliver any plan, or any lease thereunder, without obtaining the consent and approval of the board of estimate.

ARTICLE IX
MISCELLANEOUS

Section 100. Construction of chapter.

101. Construction of terms.

102. Additional powers and duties of commission and board of transportation.

103. Exemption from taxation.

104. Transfer of officers and employees.

105. Transfer of records.

106. Records; prima facie evidence.

107. Pending actions and proceedings.

108. Continuity of jurisdiction.

109. Inconsistent laws inapplicable.

110. Separability.

111. Legislative intent.

112. Schedule of laws repealed.

113. Effective date.

§ 100. Construction of chapter. a. This chapter shall not be construed to repeal or in any manner affect article six of the railroad law, except so far as such article would, if this chapter had not been passed, authorize the appointment hereafter of any commissioners applied for as provided in section two hundred twenty of such law in any city or authorize any commissioners already appointed pursuant to such section in any such city to fix, determine or locate any new route pursuant to the provisions of such article of the railroad law.

b. This chapter shall not repeal or in any manner affect the railroad law, except as expressly provided, or except so far as the provisions thereof conflict with the provisions of this chapter. But nothing in

this section shall prevent the board of transportation from laying out a route for a railroad and constructing and operating a railroad, and such board shall have the right to lay out such route and construct and operate such railroad over, under, along or across any street in, along, under or over which there shall be any existing railroad, provided that the routes so laid out by the board and the railroad so constructed by it shall so pass over or under or at the side of such existing railroad as not to interfere with its operation.

c. This chapter shall not be construed in any manner to affect the exercise or enjoyment at any time of any right acquired, exercised or enjoyed before the thirty-first day of January, eighteen hundred ninety-one by any corporation duly incorporated and organized before such date or deriving powers and rights under the laws of this state.

d. This chapter shall not affect or impair the exercise or enjoyment of any right or rights possessed before the thirty-first day of January, eighteen hundred ninety-one or acquired or authorized to be acquired, exercise or enjoyed by any street surface railroad corporation before such date, except as herein otherwise expressly provided.

§ 101. Construction of terms. Whenever the term public service commission, or board of rapid transit railroad commissioners, or transit construction commissioner, or transit commission, occurs in any law, contract or document relating to a subject or matter jurisdiction whereof was transferred to the board of transportation, or when in any law, contract or document reference is made to such commission, board or commissioner in connection with a subject or matter jurisdiction whereof was so conferred, such term or reference shall be deemed to refer to and include the board of transportation, so far as such law, contract or document pertains to matters which are within the jurisdiction of such board.

§ 102. Additional powers and duties of commission and board of transportation. Subject to the provisions of this chapter, the

commission and the board of transportation within their respective jurisdictions, shall have such powers as may be requisite to the efficient performance of the duties imposed upon them by this chapter, any contract or any law.

§ 103. Exemption from taxation. The bonds and securities issued by the city and the income or profits therefrom, the railroads and property owned by the city and the gross receipts or income derived from such railroads and property or from the operation thereof, and the transportation or right to or privilege of transportation of persons or property upon any such railroads, shall at all times be free from taxation or assessment by the state or by any subdivision thereof.

§ 104. Transfer of officers and employees. Officers and employees of the transit commission exercising functions and performing service in respect to subject or matters, jurisdiction of which was transferred to the board of transportation, shall be eligible for transfer and appointment without examination to offices and positions in the office of the board of transportation; and, so far as necessity for such service exists, shall be so transferred and appointed. Officers and employees of the transit commission, having prior to July first, nineteen hundred forty exercised functions and having performed services in respect to subjects or matters, jurisdiction of which was transferred to the board of transportation, shall be eligible to have their records of service transferred to the municipal civil service commission to be credited as service rendered for the city.

§ 105. Transfer of records. The transit commission shall transfer and deliver to the board of transportation all contracts, books, maps, plans, papers and records of whatever description pertaining to subjects or matters, jurisdiction whereof was transferred to the board of transportation; and such board is authorized to take possession of all such contracts, books, maps, plans, papers and records. If any documents or records of the transit commission pertaining to a subject or matter,

jurisdiction whereof was transferred to the board of transportation, are so combined or connected with documents or records pertaining to other subjects or matters within the jurisdiction of such commission as to render it impracticable to deliver such documents or records to the board of transportation as required by this section, the transit commission shall cause to be prepared certified copies of the parts of such documents and records as pertain to the subject or matter, jurisdiction whereof was transferred to the board of transportation, and shall deliver the same to such board. The transit commission shall also turn over to the board of transportation such supplies, furniture and equipment as such commission shall determine are no longer needed for its purposes.

§ 106. Records; prima facie evidence. The record of the proceedings of the board of transportation, and the records and printed minutes of the transit commission, of the former transit construction commissioner, of the former public service commission for the first district, and of the former board of rapid transit railroad commissioners, transferred to the board of transportation, or certified copies thereof when such certified copies are authorized by this chapter to be delivered to the board of transportation instead of originals, shall be prima facie evidence of the proceedings of the board of transportation, of the transit commission, of the former transit construction commissioner, of the former public service commission for the first district, or of the former board of rapid transit railroad commissioners, as the case may be, in respect to matters concerning which such records or minutes relate. Certified copies of such records or papers shall in like manner constitute prima facie evidence.

§ 107. Pending actions and proceedings. This chapter shall not affect any action or proceeding, civil or criminal, brought by or against the transit commission, or the former transit construction commissioner, public service commission for the first district, or the board of rapid transit railroad commissioners in respect of rights, powers, duties and obligations transferred to and conferred upon the board of

transportation; but such action or proceeding may be prosecuted or defended in the name of the board of transportation and, upon application to the court, the board of transportation shall be substituted as a party in such pending action or proceeding. Any investigation, examination or hearing, undertaken, commenced or instituted by the transit commission or the transit construction commissioner or the public service commission for the first district or the board of rapid transit railroad commissioners before the time this article takes effect, and relating to a subject or matter jurisdiction whereof was transferred to the board of transportation, may be conducted to final determination by the board of transportation.

§ 108. Continuity of jurisdiction. The board of transportation shall be deemed and held to constitute a continuation, as to matters within its jurisdiction, of the transit commission, and not as a new commission, for the purpose of succession to all such of the rights, powers, duties and obligations of the transit commission transferred to such board of transportation.

§ 109. Inconsistent laws inapplicable. The provisions of any laws or parts of laws which are inconsistent with this chapter, and in so far only as they are inconsistent with this chapter, shall have no application to the rights, powers and obligations conferred or created by and under authority of this chapter or to any proceedings taken thereunder.

§ 110. Separability. If any clause, sentence, paragraph, section or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 111. Legislative intent. Insofar as this chapter revises, consolidates, codifies, continues or restates the provisions of the rapid transit act, as amended and supplemented, and articles seven and eight of the public service law in force when this chapter shall take effect, such provisions shall be deemed unchanged in substance and effect. If in this chapter there shall have been incorporated any provision of law that heretofore shall have been superseded or specifically or impliedly repealed, the incorporation of any such provision shall not revive such superseded or repealed provision, nor shall such incorporation be construed to indicate any legislative determination that such provision had not been theretofore so superseded or repealed. If in this chapter there shall have been incorporated any new provision, which is not a revision, consolidation, codification, continuance or restatement of the provisions of the rapid transit act, as amended and supplemented, and articles seven and eight of the public service law in force when this chapter shall take effect, such new provision shall not become effective, but shall be deemed an inadvertence or error.

§ 112. Schedule of laws repealed. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 113. Effective date. This act shall take effect immediately.