TRANSPORTATION LAW

ARTICLE 1
SHORT TITLE; DEFINITIONS

§ 1. Short title. This chapter shall be known as the "Transportation Law."

§ 2. Definitions. Whenever used in this chapter, unless a different meaning clearly appears from the context the terms:

1. "Baggage company" means a person engaged under contract or agreement with a railroad company or street railroad company in the checking of baggage, or in the collection and delivery of baggage between railroad stations, or between railroad stations and hotels,

residences, business places or steamer docks.

2. "Bus company" means a person, or a lessee, trustee or receiver appointed by any court whatsoever, owning, leasing, or operating or proposing to own, lease or operate a bus line.

3. "Bus line" is a sub-classification of common carrier of passengers by motor vehicle that is usually characterized by the use of vehicles having a seating capacity of greater than twenty passengers; by multiple pickup and discharge points along designated routes; and by no prearrangements or reservations by passengers.

4. "Certificate" means operating authority issued under this chapter to common carriers of passengers by motor vehicle, common carriers of property by motor vehicle and common carriers of household goods by motor vehicle.

4-a. "Commercial motor vehicle" means any self-propelled or towed motor vehicle used on a highway in intrastate, interstate or international commerce to transport passengers or property when the vehicle (a) has a gross vehicle weight rating or gross combination weight of ten thousand one pounds or more, whichever is greater; or (b) is designed or used to transport more than eight passengers including the driver for compensation; or (c) is designed or used to transport more than fifteen passengers including the driver and is not used to transport passengers for compensation; or (d) is used in transporting material found by the United States secretary of transportation to be hazardous under section 5103 of title 49 of the United States code and transported in a quantity requiring placarding under regulations prescribed by such secretary under subtitle B, chapter I, subchapter C of title 49 of the code of federal regulations.

5. "Commissioner" means the state commissioner of transportation.

6. "Common carrier" means a railroad company, street railroad company, express company, car company, sleeping-car company, freight company, freight line company, baggage company, transfer company, carrier by

water, person or the lessee, trustee or receiver appointed by any court whatsoever, owning, operating or managing any such agency for public use in the conveyance of persons or property within this state other than by use of ski tows and other passenger tramways operated at ski centers. The term shall not include an express company, baggage company or transfer company unless it is operated wholly or in part upon or in connection with a railroad or street railroad or a municipally owned ferry or ferry company operating under a lease from a city or a carrier by water except where it is engaged or may be required to be engaged with a carrier by railroad in the transportation of passengers or property over a through route partly by water and partly by railroad for a continuous carriage or shipment between points in this state.

7. "Common carrier of passengers by motor vehicle" means any person that transports passengers by motor vehicle for compensation by providing service for the general public on an individual fare basis over regular or irregular routes. It shall include a bus line as defined by subdivision three of this section.

8. "Common carrier of property by motor vehicle" means any person that transports property by motor vehicle for compensation for the general public.

9. "Contract carrier of passengers by motor vehicle" means any person that transports passengers by motor vehicle for compensation, in chartered party or special party service, or by providing service under a continuing agreement calling for the exclusive use of vehicles by a person or persons.

10. "Contract carrier of property by motor vehicle" means any person that transports property by motor vehicle for compensation under special and individual continuing contracts or arrangements with one person or a limited number of persons for an extended period of time, or that provides services in addition to transportation services that are not normally made available or provided by common carriers of property.

11. "Corporation" means and includes a corporation, company,

association and joint-stock association.

12. "Department" means the state department of transportation.

13. "Governing body" means the local legislative body as such term is defined in subdivision seven of section two of the municipal home rule law.

14. "Highway" means a highway, road, street, alley, avenue, thoroughfare, bridge or public driveway which is opened to the public and publicly maintained, whether by the state or a subdivision thereof, or by a public authority.

15. "Household goods" means:

(a) personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling and such other similar property as the commissioner may provide by regulation; except that this paragraph shall not be construed to include property moving from a factory or store, except such property as the householder has purchased with intent to use in his or her dwelling and which is transported at the request of, and the transportation charges paid to the carrier by, the householder;

(b) furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals or other establishments when a part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals, or other establishments and such other similar property as the commissioner may provide by regulation; except that this paragraph shall not be construed to include the stock-in-trade of any establishment, whether consignor or consignee, other than used furniture and used fixtures, except when transported as incidental to moving of the establishment, or a portion thereof, from one location to another; and

(c) articles, including objects of art, displays, and exhibits, which because of their unusual nature or value require the specialized handling and equipment usually employed in moving household goods and such other similar articles as the commissioner may provide by regulation; except that this paragraph shall not be construed to include any article, whether crated or uncrated, which does not, because of its unusual nature or value, require the specialized handling and equipment usually employed in moving household goods.

16. "Infant" or "minor" means a person who has not attained the age of eighteen years.

17. "Motor carrier" includes common and contract carriers of passengers by motor vehicle, common and contract carriers of property by motor vehicle, and common carriers of household goods by motor vehicle. Any reference in article six, seven, eight or nine of this chapter to a "common carrier", "contract carrier", "common carrier of property", "contract carrier of property", "common carrier of passengers", or "contract carrier of passengers" shall be deemed to mean such type of carrier by motor vehicle.

18. "Motor vehicle" means a vehicle, machine, bus, tractor, truck trailer or semi-trailer, propelled or drawn by mechanical power and used upon the highways in the transportation of property or passengers, but does not include any locomotive or car operated exclusively on a rail, rails or track.

19. "Municipal corporation" or "municipality" means a county, city, village or town; except that in articles three, four and five, subdivision three of section one hundred seventy-one and section one hundred ninety of this chapter, a "municipality" shall not include a county.

20. "Non-profit car pools" means the prearranged transportation of passengers by motor vehicle to and from their place of employment or other destination, where moneys paid to the motor vehicle owner are only for a recovery of some or all of the expenses related directly to the transporting of the passengers, including tolls, fuel, insurance and depreciation, provided that the operator of such vehicle does not drive the motor vehicle for profit.

21. "Permit" means operating authority issued under this chapter to

contract carriers of passengers by motor vehicle and contract carriers of property by motor vehicle.

22. "Person" means and includes an individual, firm, copartnership, association or corporation.

23. "Private carriage" means the transportation of property by a person other than a motor carrier when such person is the owner, lessee or bailee of the property being transported and when such transportation is for the purpose of sale, lease, rent or bailment.

23-a. "Private carrier of passenger by motor vehicle" means any person that transports passengers by commercial motor vehicle which is provided in the furtherance of a commercial enterprise and which is not for compensation and is not available to the public at large, in intrastate, interstate or international commerce.

23-b. "Private motor carrier" means any person who provides transportation of property or passengers by commercial motor vehicle for a business purpose and is not a common or contract carrier of passengers or property by motor vehicle.

24. "Railroad" means a railroad, other than a street railroad, operated for public use in the conveyance of persons or property for compensation, with all bridges, ferries, tunnels, equipment, switches, spurs, tracks, stations and terminal facilities used, operated or owned by or in connection therewith.

25. "Railroad company" means a person, or a lessee, trustee or receiver appointed by any court whatsoever, owning, operating or managing any railroad or cars or other equipment used thereon or in connection therewith.

26. "School" means every place of academic, vocational or religious service or instruction for persons under the age of twenty-one, except places of higher education. It shall include every child care center; every institution for the care or training of the mentally or physically

handicapped; and every day camp.

27. "Services and transportation provided by a contract carrier of passengers by motor vehicle" means and includes all vehicles operated by, for or in the interest of such carrier irrespective of ownership or of contract, express or implied, together with all facilities and property operated or controlled by such carrier and used in the transportation of passengers or in the performance of any service in connection therewith.

28. "Shipment" means a lot of freight tendered to a carrier by one consignor at one place at one time for delivery to one consignee at one place on one bill of lading.

29. "Street railroad" means a railroad by whatever power operated, or an extension or branch thereof, for public use in the conveyance of persons or property for compensation, being mainly upon, along, above or below any highway, including all equipment, switches, spurs, tracks, right of trackage, subways, tunnels, stations, terminals and terminal facilities used, operated or owned by or in connection therewith, but shall not include a railroad constituting or used as part of a trunk line railroad system.

30. "Street railroad company" means a person, or a lessee, trustee or receiver appointed by any court whatsoever, owning, operating or managing any street railroad or cars or other equipment used thereon or in connection therewith.

31. "Tank motor vehicle" means a motor truck, trailer or semi-trailer respectively, used for the transportation of liquids, and provided with a tank or tanks therefor which are mounted on the frame or chassis or are an integral part of such vehicle.

31-a. "Telecommuting" shall mean the conservation of energy through the reduction of travel by employees of the department to and from their designated workplace through the use of telecommunication and computer technology in tasks including, but not limited to, information transfer and processing.

32. "Transfer company" means a person engaged under contract or agreement with a railroad company or street railroad company in the transfer of passengers or property between railroad stations, or between railroad stations and hotels, residences, business places or steamer docks.

33. "Transportation of property" includes any service in connection with the receiving, delivery, elevation, transfer in transit, ventilation, refrigeration, icing, storage and handling of the property transported.

34. "Utility company" or "public utility company" is used to avoid repetitions in a provision applying to one or more persons operating an agency or agencies for public service, and who or which is or are subject to the jurisdiction, supervision and regulations prescribed by or pursuant to this chapter; such term being so used only as a general term descriptive of such a person.

35. "Van service" is a sub-classification of common carrier of passengers by motor vehicle that provides service on a prearranged regular daily basis between a zone in a residential neighborhood and a location which shall be a work related central location, a mass transit or mass transportation facility, a shopping center or recreational facility, but shall not include service to or from an airport. Such service is usually characterized by the use of vehicles having a seating capacity of twenty passengers or less. Provided, however, that if a city with a population of over one million adopts a local law or ordinance pursuant to subdivision five of section eighty of this chapter, the term "van service" as it applies to van service in such city shall include service that otherwise meets the requirements of this subdivision but is service to or from an airport.

ARTICLE 2

POWERS, DUTIES AND JURISDICTION OF

THE DEPARTMENT OF TRANSPORTATION

§ 10. Declaration of policy. It is hereby declared to be the policy of the state of New York that adequate, safe and efficient transportation facilities and services at reasonable cost to the people are essential to the economic growth of the state and the well-being of its people and that the planning and development of such facilities and services shall be coordinated by a state department of transportation with overall responsibility for balanced transportation policy and planning.

§ 11. Department of transportation; commissioner. There shall be in the state government a department of transportation. The head of the department shall be the commissioner of transportation, who shall be appointed by the governor, by and with the advice and consent of the senate, and hold office until the end of the term of the governor by whom he was appointed and until his successor is appointed and has qualified.

The commissioner of transportation shall have sole charge of the administration of the department.

§ 12. Offices of the department. The principal office of the department of transportation shall be in the county of Albany. Branch offices may be established and maintained by the department in such places as the commissioner may determine, and for which appropriations are made by the legislature.

§ 13. Organization of department; officers and employees. 1. The commissioner may, from time to time, create, abolish, transfer and consolidate divisions, bureaus and other units within the department not expressly established by law as he may determine necessary for the efficient operation of the department, subject to the approval of the director of the budget.

2. The commissioner may appoint such deputies, directors, assistants and other officers and employees as may be needed for the performance of his duties and may prescribe their powers and duties and fix their compensation within the amounts appropriated therefor. Each deputy, director, assistant and other officers and employees shall be a person qualified by training and experience for the performance of the duties assigned to him. Subject to the provisions of the civil service law and rules, the commissioner may appoint such other employees of the department as may be necessary to carry out the provisions of this chapter. He may transfer officers or employees from their positions to other positions in the department, may consolidate such positions, or may abolish such office or position.

§ 14. General functions, powers and duties of department. The department, by or through the commissioner or his duly authorized officer or employee, shall have the following general functions, powers and duties:

1. To coordinate and develop comprehensive, balanced transportation policy and planning for the state to meet the present and future statewide needs for adequate, safe and efficient transportation facilities and services at reasonable cost to the people;

2. To coordinate and assist in the balanced development and operation of such transportation facilities and services in the state, including

highway, mass transit, marine and aviation facilities;

3. To develop policies and proposals designed to help meet and resolve the special problems of urban and commuter transportation in metropolitan areas throughout the state and the special problems of transportation of other areas of the state.

4. To make such studies and analyses of transportation problems as the commissioner may deem appropriate or as may be requested by the governor relating to any aspect of transportation in the state.

5. To consult with and co-operate with

(a) officials of departments and agencies of the state having duties and responsibilities concerning transportation;

(b) officials and representatives of public corporations as defined in article one, section three of the general corporation law;

(c) official representatives of the federal government, of neighboring states and of interstate agencies on problems affecting transportation in this state;

(d) officials and representatives of carriers and transportation facilities and systems in the state;

(e) persons, organizations and groups utilizing, served by, interested in or concerned with transportation facilities and systems in the state.

6. To appear and participate in proceedings before any federal regulatory agency involving or affecting transportation in this state.

7. For the accomplishment of the purposes of the department of transportation, to undertake any studies, inquiries, surveys or analyses it may deem relevant through the personnel of the department or in cooperation with any public or private agencies, including educational, civic and research organizations, colleges, universities, institutes or foundations.

8. To inspect the property and examine the accounts, books and documents of any person, firm or corporation engaged in operating a public transportation facility or system in whole or in part within the

state; may hold investigations and hearings within or without the state; and shall have power to compel the attendance of witnesses and the production of accounts, books and documents by the issuance of a subpoena.

9. To advise and cooperate with municipal, county, regional and other local agencies and officials within the state to plan and otherwise coordinate the development of a system of air routes, airports and landing fields within the state and to protect their approaches.

10. To cooperate with other state departments, and with boards, commissions and other state agencies and with appropriate federal agencies, and with interested private individuals and groups in the coordination of plans and policies for the development of air commerce and air facilities.

11. To act as the official agency of the state in all matters affecting aviation under any federal laws now or hereafter to be enacted, and as the official agency of a county, town, city, village or authority in connection with the grant or advance of any federal or other funds or credits to the state or through the state to its local governing bodies for airports and other air facilities complying with the provisions of such grants or advances.

12. To exercise all functions, powers and duties relating to traffic regulation and control as set forth in the vehicle and traffic law or in other laws.

13. To report from time to time to the governor and make an annual report to the governor and the legislature which shall include its recommendations.

14. To formulate and execute contracts, keep accounts, record personnel data, acquire property, adjust claims, compile statistics and engage in research opportunities; all according to the statutes or department orders and regulations in such cases made and provided.

14-a. To conduct or cause to be conducted an inventory of air transportation facilities, both publicly or privately owned, that are primarily used for general aviation purposes and provide no regularly scheduled passenger aircraft service that results in more than two thousand five hundred enplaned passengers annually; and to submit, on or before February first, nineteen hundred ninety-six, and annually thereafter, such inventory to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, the minority leader of the assembly, the chair of the senate finance committee and the chair of the assembly ways and means committee, the chairs of the senate transportation, local governments and commerce, economic development and small business committees, and the chairs of the assembly transportation, local government and economic development, job creation, commerce and industry committees.

15. To prepare the plans, specifications, designs and estimates, and, by the procedures and methods provided by the laws relating thereto, to construct and reconstruct:

(a) The highways and other public ways that are now or shall hereafter be under the jurisdiction of the department for such purposes, whether generally or specially;

(b) The canals, waterways of the state and structures that are now or shall hereafter be under the jurisdiction of the department for such purposes;

(c) The bridges and grade separation structures that are now or shall hereafter be under the jurisdiction of the department for such purposes;

(d) Parking facilities and appurtenances at or adjacent to transportation interfaces and connections to such facilities.

15-a. In addition to any other notification requirements, the commissioner shall notify the municipality in which the highway is located at least sixty days before commencing construction if such construction shall result in any alteration of the course of such highway or any alteration in the width of the pavement of such highway.

16. To operate and maintain: (a) the state highways, other public ways, bridges and grade separations; (b) the canals, waterways of the

state and structures; and (c) either on its own account or by agreement with a municipality, authority or private contractor, parking facilities and appurtenances at or adjacent to transportation interfaces and connections to such facilities; all of which are mentioned generally in the previous subdivision of this section.

17. Notwithstanding the provisions of this chapter or of any general or special law, and whenever funds therefor are available or have been otherwise provided, the commissioner is hereby authorized and empowered, subject to the approval of the division of the budget, to retain and employ private engineers, architects and consultants, or firms practicing such professions for purposes of (1) preparing designs, plans and estimates of structures of any type and character, (2) rendering assistance and advice in connection with any project, whether defined or proposed, and under the supervision of the department of transportation, (3) preparing surveys, studies and plans, including the negotiating for and securing of reservation easements necessary to such plans, for joint development of transportation corridors and provision for multiple use outside the counties of Kings and Queens of rights of way appurtenant thereto, and (4) performing such other and necessary services as the commissioner may deem necessary in the administration of the department.

18. To make and prescribe rules and regulations in relation to the discharge of the commissioner's functions, powers and duties and those of the department of transportation.

19. The commissioner shall exercise the powers and perform the duties of the commission on boundary waters between the United States and Canada, created by chapter eight hundred six of the laws of nineteen hundred twenty.

20. The commissioner shall exercise all powers and duties vested in terms in the commissioner or commission of highways since July first, nineteen hundred twenty-three, and also shall exercise the powers and perform the duties of the interstate bridge commission as prescribed by article two-A of this chapter.

21. The commissioner shall continue to

(a) Keep in his office a map of the state and cause to be delineated thereon all changes in the bounds thereof or of the counties therein.

(b) Collect and preserve all maps, plans, drawings, field notes, levels and surveys of every description made for the use of the state and all engineering instruments belonging to the state.

The maps, drawings and other documents deposited in the department shall be open for inspection of the public at all reasonable hours, but shall not be removed or taken therefrom.

22. The commissioner may establish a schedule of fees to be collected by him for (a) the filing in his office or department of any map or written instrument required by law to be so filed; (b) the preparation of any copy of a map or written instrument filed in his office or department; (c) for certifying any such map or written instrument; and (d) for any other service rendered in connection with the work of his department and for which he deems it necessary to charge and to collect a fee therefor.

23. When moneys shall have been appropriated therefor, to conduct systematic gaging of rainfall and stream flow in the state in connection with the barge canal system.

24. It shall be the duty of officers and employees of the department of transportation to report to the commissioner, on blanks to be furnished by the state industrial commissioner, any and all violations any such officer or employee may personally observe or have brought to his attention relating to any of the provisions of articles eight and eight-a of the labor law. The industrial commissioner may investigate, or hold a hearing to determine if such acts or omissions so reported constitute a violation of any of the provisions of said articles. The commissioner upon notification of such violation and determination by the industrial commissioner shall thereupon take proceedings to enforce the provisions of such articles.

25. Moneys heretofore received by the department of transportation

pursuant to any law or to an order, rule or regulation made and prescribed by the commissioner regulating the discharge of his functions, powers and duties and those of the department and moneys heretofore or hereafter received pursuant to rules and regulations of the divisions or bureaus in said department regulating the discharge of their function, powers and duties, respectively, may be refunded to the party for whose account same were received, on proof satisfactory to the commissioner that such moneys were in excess of the amount required by such law, order, rule or regulation. Such refunds shall, upon approval by the commissioner and after audit by the comptroller, be paid from any moneys in the custody of the department of transportation received as fees, charges, rentals or to insure the performance of conditions imposed under permits pursuant to such orders, rules or regulations.

26. To exercise and perform such other functions, powers and duties as shall have been or may be from time to time conferred or imposed by law, including all the functions, powers and duties assigned and transferred to the department from the department of commerce, the department of motor vehicles, the department of public works and the office of transportation in the executive department by several chapters of the laws of nineteen hundred sixty-seven and from the public service commission of the department of public service by chapter two hundred sixty-seven of the laws of nineteen hundred seventy.

27. Within amounts appropriated to the department, to contract, outside the city of New York, with federally-funded nonprofit organizations that are organized for the purpose of beautification of highways, parks and recreation areas and employ persons sixty years of age or older whose net annual income does not exceed one thousand dollars to carry out such activities. The contract shall name the organization, the amount and manner of payment for the service to be rendered, nature of such service, the rendering of a verified account of the disbursements with verified or certified vouchers therefor attached, a refund of any unused amount, and such other conditions upon the use thereof as may be deemed proper.

28. Within amounts appropriated therefor to engage in a program of

improvements to omnibus terminals, and services attendant thereto, such improvements and services to include, but not be limited to, rehabilitation of existing facilities, supplying information on available transportation services to the traveling public, and the provision of connecting services between transportation modes.

29. (a) The commissioner shall develop and implement an Adopt-a-Highway Program, the purpose of which shall be to reduce and remove litter from the state highways. Such program shall include but not be limited to:

(i) providing and coordinating services by volunteers or groups to reduce the amount of litter on the highways of the state including safety briefings, reflective safety gear, trash bags, and trashbag pick up on state highways.

(ii) providing and installing highway signs identifying those volunteers or groups adopting particular segments of such highways.

(b) Notwithstanding any inconsistent provision of law, the state and its employees shall not be liable for damages suffered by any person resulting from the actions or activities of such volunteers or groups.

(c) The commissioner shall promulgate rules and regulations necessary to implement and carry out the provisions of this subdivision.

* 29-a. (a) To establish and implement a state memorial sign program to memorialize persons who died due to injuries sustained in a fatal motor vehicle crash on state highways, including controlled access state highways, maintained by the state which is reportable to the federal fatality analysis reporting system (FARS). Such program shall provide for the provision and installation of signs on such state highways maintained by the state in memory of such persons, upon application within five years of such fatal crash by an immediate family member of such person and payment of a fee, established by the commissioner, for the costs of design, production, placement, and maintenance of such signs. Such program also shall provide that:

(i) in the event any member of such person's immediate family submits an objection to the placement of such memorial sign to the commissioner, the sign shall not be placed, and shall be removed if the objection was received after such sign was placed;

(ii) no memorial sign shall be approved for a person who died while operating a motor vehicle in violation of section eleven hundred ninety-two of the vehicle and traffic law and as a result of such intoxication or impairment, such person operated the motor vehicle in a manner that caused the serious physical injury or death of another person;

(iii) no more than one memorial sign may be placed at the same location, provided that in the event of multiple applications for a single location, the commissioner may provide for a sign type capable of accommodating multiple applications, provided that such sign otherwise meets the requirements of this subdivision;

(iv) such memorial signs shall be of a design which differs from signs erected to dedicate or memorialize a highway or bridge pursuant to article twelve of the highway law;

(v) the placement of memorial signs on such state highways maintained by the state shall be at locations determined by the commissioner, taking into consideration the crash location, roadway geometry, existing signage and traffic control devices, available right of way, safety concerns, and any other factor the commissioner deems it necessary to consider. Such placement shall also be in accordance with this subdivision, with rules, regulations, and guidelines promulgated by the commissioner, and with the requirements of the Manual on Uniform Traffic Control Devices (MUTCD) and any other applicable state or federal law, rule, or regulation relating to highway signage. Provided, however, that no such sign shall be placed in front of a residence or business;

(vi) memorial signs placed pursuant to this section shall be removed two years from the date of their initial placement. The commissioner may remove damaged signs, which shall be replaced for the remainder of the two-year period upon application by an immediate family member and payment of a replacement fee as determined by the commissioner. Provided, however, the department shall replace, for the remainder of the two-year period, any such sign damaged due to negligence of the department and no application or replacement fee shall be required for such replacement;

(vii) for the safety of the public, on-site dedication or ceremonies and the placement of decorations or other items at the site of a memorial sign shall be prohibited; and

(viii) information on the state memorial sign program established pursuant to this subdivision shall be posted on the department's public-facing website, together with highway and traffic safety information to further inform and educate the public on methods, practices, and actions to improve the safety of motor vehicle occupants, motorcyclists, bicyclists, pedestrians, and all roadway users.

(b) For the purposes of this subdivision, the following terms shall have the following meanings:

(i) "controlled-access state highway" shall mean every highway, street, or roadway under the jurisdiction of the state in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the state;

(ii) "fatality analysis reporting system" or "FARS" shall mean the nationwide database established by the national highway traffic safety administration of the United States department of transportation, as authorized pursuant to part 30182 of title 49 of the United States code and part 403 of title 23 of the United States code, which collects data on fatal motor vehicle traffic crashes;

(iii) "highway" shall mean the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel;

(iv) "immediate family" shall mean the decedent's spouse or domestic partner, birth parents, adoptive parents, stepparents, birth children, adoptive children, stepchildren, siblings, and stepsiblings;

(v) "manual on uniform traffic control devices" or "MUTCD" shall mean the manual and specifications for a uniform system of traffic control devices maintained by the commissioner of transportation pursuant to section sixteen hundred eighty of the vehicle and traffic law; and

(vi) "reportable to the federal fatality analysis reporting system" shall mean a crash involving a motor vehicle traveling on a trafficway customarily open to the public resulting in the death of a vehicle occupant or a nonoccupant within thirty days of the crash.

(c) The commissioner shall promulgate rules and regulations necessary to implement and carry out the provisions of this subdivision.

* NB Effective December 12, 2026

30. To establish regulations for the determination of hazardous zones

pursuant to the provisions of section thirty-six hundred thirty-five-b of the education law.

31. To develop a plan to maximize the use of telecommuting to conserve energy otherwise used by the personnel of the department in commuting to their assigned workplace. Within one year of the effective date of this subdivision, the department shall submit a report to the governor and the legislature on the impact of such plan to include, but not be limited to, energy conservation, air quality, workforce acceptance, office costs and potential cost savings.

32. To cooperate with the department of environmental conservation, the department of economic development, and the department of motor vehicles to assist employers who seek such assistance and who are located in a severe non-attainment area for ozone, as designated by the administrator of the United States environmental protection agency, to increase average passenger occupancy per vehicle in commuting trips of employees between home and workplace during peak travel periods.

33. (a) To promulgate, in consultation with the department of environmental conservation, rules and regulations to implement a heavy duty vehicle inspection program pursuant to section 19-0320 of the environmental conservation law, including, but not limited to, requirements for the roadside inspection of heavy duty vehicles.

(b) To examine, in a manner and at locations deemed appropriate by the commissioner in consultation with the commissioner of the department of environmental conservation, heavy duty vehicles, as such vehicles are defined in section 19-0320 of the environmental conservation law, to ascertain whether such vehicles are in compliance with the program for the inspection of emissions and emissions control equipment established pursuant to such section 19-0320.

34. To issue certifications with respect to the transportation improvement credit, as provided for by section twenty of the tax law.

35. Within amounts appropriated therefor, to establish and administer a safe routes to school program, the purpose of which is to eliminate or

reduce physical impediments to primary and secondary school-aged children walking or bicycling to school.

(a) The commissioner is hereby vested with the authority and responsibility to approve funding for projects authorized in paragraph (b) of this subdivision. The funding of projects will be made upon application, in a format prescribed by the commissioner, by the project sponsor for funding of prior expenditures. Provided, however, that nothing contained in this subdivision shall prohibit any project sponsor from submitting any project authorized by such paragraph (b) for consideration for federal funding within the process by which federal funds are obtained, and obtaining such funds.

(b) Safe routes to school projects shall be limited to project costs for the construction, reconstruction, enhancement, improvement, replacement, reconditioning, restoration, rehabilitation and preservation of crosswalks, sidewalks, bicycle lanes, and traffic calming measures where the service life of the project is at least ten years. Funding of project expenditures for an approved project shall require certification from the project sponsor that:

(i) the project has a service life of ten or more years;

(ii) the project is located within two miles of a primary school or within three miles of a secondary school;

(iii) the amount of funds requested is no greater than prior unreimbursed municipal project expenditures for work completed or materials incorporated in qualifying projects; and

(iv) the amount of municipal funds appropriated for transportation capital projects by municipalities shall not be reduced because of the availability of these funds.

(c) The commissioner shall request the project sponsors to furnish such information in writing as may be necessary. By written agreement between them, a county may act for one or more cities, towns or villages in the implementation of projects eligible for funding pursuant to this subdivision. A copy of such agreement shall be filed with the commissioner.

(d) Consideration also shall be given to the demonstrated need of an applicant, the potential of the project to reduce child injuries and fatalities, and the potential of the project to reduce or eliminate hazardous conditions for pedestrians and/or bicyclists.

(e) For the purposes of this subdivision, "traffic calming measures" shall mean any physical engineering measure or measures that reduce the negative effects of motor vehicle use, alter driver behavior and improve conditions for non-motorized street users such as pedestrians and bicyclists.

36. To prepare and submit reports on highway pavement and bridge conditions, capital program letting and implementation, capital program accomplishments, and non-MTA downstate suburban and upstate transit capital programs. The commissioner shall be responsible for issuing the following reports in a searchable electronic format accessible to users to the governor, temporary president of the senate, speaker of the assembly, the chair of the senate transportation committee, the chair of the assembly transportation committee, the chair of the senate finance committee and the chair of the assembly ways and means committee:

(a) On or before June first, two thousand twenty-two and by June first of each year thereafter, a report for each state fiscal year detailing the department's on-state system capital projects and off-state system local capital projects, as defined in subdivision two-a of section two of the state finance law, planned for the fiscal year including projects receiving funds pursuant to New York works. Such report shall include projects expected to be advertised for public bid in the respective state fiscal year, including estimated letting dates by department region. The report shall also include a project description, proposed month of letting, project identification number, and preliminary project cost estimates. Such report shall present project letting details by department region, within region by funding source, within funding source by capital program category (pavement preservation, pavement reconstruction, bridge preservation, bridge rehabilitation or replacement, safety, mobility, and other), and within capital program category by project phase (scoping, preliminary engineering, right-of-way, final design and construction). After completion of each quarter, the department shall issue a report, including the actual letting dates and contract amounts for each project accompanied by the same information. The report shall also compare changes in planned construction lettings with actual project lettings, changes in project costs of more than twenty-five percent for projects exceeding fifteen million dollars and the contributing factors for such project cost changes, and changes in project letting schedules of more than twelve months and contributing factors for such changes in letting schedules, and the estimated number of jobs created by each project. For purposes of this subdivision, "preliminary project cost estimates" shall mean publicly available project cost estimates including those required by the Statewide Transportation Improvement Program (STIP) established pursuant to Title 23 U.S.C. sections 134 and 135, Title 23 C.F.R. Part 450 and Title 49 U.S.C. Chapter 53 and those required by Transportation Improvement Programs (TIPs) as defined by Title 23 U.S.C. section 134(b)(6). For projects without such estimates, such term shall mean estimates in the following ranges: one to one hundred thousand dollars, one hundred thousand to two hundred fifty thousand dollars, two hundred fifty thousand to five hundred thousand dollars, five hundred thousand to one million dollars, one million to two million five hundred thousand dollars, two million five hundred thousand to five million dollars, five million to ten million dollars, ten million to fifteen million dollars, fifteen million to twenty-five million dollars, twenty-five million to seventy-five million dollars, seventy-five million to one hundred fifty million dollars, and one hundred fifty million dollars or greater.

(b) On or before June first, two thousand twenty-two and by June first of each year thereafter, an accomplishment report for the prior state fiscal year detailing the amount of funding obligated for major capital program categories including: pavement preservation, pavement reconstruction, bridge preservation, bridge rehabilitation or replacement, safety, and mobility. Such capital report shall present details by department region, within region by funding source, within funding source by capital program category and within capital program category by project phase, including by scoping, preliminary engineering, right-of-way, final design and construction phase.

(c) On or before June first, two thousand twenty-two and by June first of each year thereafter, a highway pavement and bridge condition report that details conditions of state highway pavement by department region and statewide condition goals for pavement, the condition of state and locally owned bridges by county and the statewide condition goals for bridge conditions, as well as the respective goals for each of these classes for the previous three years.

(d) (i) On or before June first, two thousand twenty-two and by June first of each year thereafter, a report detailing the allocations and disbursements made by the department for the prior state fiscal year of capital funds appropriated for public transportation providers within the metropolitan commuter transportation district that exclude the metropolitan transportation authority and its subsidiaries, and for public transportation providers outside the metropolitan commuter transportation district. The report on capital fund use shall indicate the amount of capital funds allocated and disbursed by the department to each respective transportation provider by capital element, including, but not limited to: rolling stock and buses, passenger stations, track, line equipment, line structures, signals and communications, power equipment, emergency power equipment and substations, shops, yards, maintenance facilities, depots and terminals, service vehicles, security systems, electrification extensions, and unspecified, miscellaneous and emergency.

(ii) On or before June first, two thousand twenty-two and by June first of every fifth year thereafter, the department shall conduct a needs assessment for each public transportation provider, excluding the metropolitan transportation authority and its subsidiaries, that includes but is not limited to: vehicle age and condition, facility and equipment state of good repair, and consistency with federal and state system safety plans. For purposes of this subparagraph, the term "public transportation provider" shall mean those public transportation systems receiving capital funds from the state, and the term "public transportation system" shall have the same meaning as such term is defined in subdivision one of section eighteen-b of this article, excluding the metropolitan transportation authority and its subsidiaries.

§ 14-a. Preservation of agricultural lands, public park and recreational lands, wildlife and waterfowl refuges and historical sites. The commissioner of transportation shall cooperate and consult with the commissioners of agriculture and markets, parks and recreation, environmental conservation and health in developing transportation plans and programs so that such programs include measures to maintain or enhance the desirable natural characteristics of the land traversed. Such cooperation and consultation shall be effected and implemented by memoranda of understanding which shall be entered into between the commissioner of transportation and each of such commissioners. Such memoranda of understanding shall provide for review of proposed transportation projects by such commissioners at all stages of progress, including preliminary and final planning and during construction, and for the cooperation by the department of transportation necessary to facilitate such review. Such memoranda of understanding shall also provide that the commissioner of transportation shall implement any suggestion or recommendation made by any of such commissioners which he deems feasible in connection with the preservation of agricultural lands, lands of public parks and recreational areas, wildlife and waterfowl refuges and historical sites.

§ 14-b. Highway safety powers and duties. The department of transportation shall have power to:

1. Advise and assist local authorities as defined in section one hundred twenty-two of the vehicle and traffic law with their traffic problems.

2. Maintain a continuous survey of traffic conditions on the public highways of the state and recommend to the appropriate legislative body, department or commission, such changes in rules, orders, regulations and existing law, including measures for the relief of traffic congestion, such as the construction or reconstruction of highways and elimination of grade crossings, as the commissioner of transportation may deem advisable.

3. Cooperate with the agencies of this and other states and of the federal government which are connected with national defense, in the formulation and execution of plans for the rapid and safe movement over highways of troops, vehicles of a military nature, and materials affecting the national defense.

4. Coordinate the activities of the department or agencies of the state government in a manner which will best serve to effectuate any such plan for the rapid and safe movement of troops, vehicles and materials as referred to in subdivision three of this section.

5. Solicit the cooperation of officials of the various political subdivisions of the state in the proper execution of plans.

6. Take an inventory, by counties, of the trucks and buses in the state, publicly and privately owned, which would be available in case of emergency affecting the national defense.

§ 14-c. Intercity rail passenger service program. * 1. The department of transportation may cooperate and contract with the national railroad passenger corporation for any intercity rail passenger services deemed necessary, convenient or desirable by the commissioner, within the amounts available by appropriation therefor, as such services are made available pursuant to the provisions of the rail passenger service act of nineteen hundred seventy and any acts amendatory or supplemental thereto, subject to the approval of the director of the budget. Notwithstanding any inconsistent law, general, special or local, the commissioner, as funds are made available for the purposes hereof, is hereby empowered to contract with such corporation and to do all other things necessary, convenient or desirable on behalf of the state to secure the full benefits available under and pursuant to such act, and to contract and do all other things necessary as hereinafter provided on behalf of the state to effect the intercity rail passenger service program which he determines is necessary, convenient or desirable.

* NB Effective until the enactment into law by the state of New Jersey of certain legislation (see chapter 108/2019 § 10 sb (a))

* 1. The department of transportation may cooperate and contract with the national railroad passenger corporation or if deemed necessary, desirable or convenient by the commissioner to facilitate the purposes of this section, with gateway development commission to the extent that commission is so authorized to act under its authorizing statute, for any intercity rail passenger services deemed necessary, convenient or

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

* NB Effective upon the enactment into law by the state of New Jersey of certain legislation and repealed 15 years from effective date but only repealed if federal funding that is necessary has not been granted (see chapter 108/2019 § 10 sb (a) and sb (c))

* 1. The department of transportation may cooperate and contract with the national railroad passenger corporation for any intercity rail passenger services deemed necessary, convenient or desirable by the commissioner, within the amounts available by appropriation therefor, as such services are made available pursuant to the provisions of the rail passenger service act of nineteen hundred seventy and any acts amendatory or supplemental thereto, subject to the approval of the director of the budget. Notwithstanding any inconsistent law, general,

special or local, the commissioner, as funds are made available for the purposes hereof, is hereby empowered to contract with such corporation and to do all other things necessary, convenient or desirable on behalf of the state to secure the full benefits available under and pursuant to such act, and to contract and do all other things necessary as hereinafter provided on behalf of the state to effect the intercity rail passenger service program which he determines is necessary, convenient or desirable.

* NB Effective upon the repeal of the amendments enacted by chapter 108 of 2019 § 3 (see chapter 108/2019 § 10 sb (a))

* 2. The commissioner shall coordinate the intercity rail passenger activities of the state and other interested public and private organizations and persons to effectuate the purposes of this section and shall have the responsibility for negotiating with the federal government with respect to intercity rail passenger service programs. The commissioner is authorized to enter into joint service agreements between the state and any railroad company, any other state department or agency, the federal government, the Canadian government, any other state or agency or instrumentality thereof, any public authority of this state or any other state, or any political subdivision or municipality of the state, relating to property, buildings, structures, facilities, services, rates, fares, classifications, dividends, allowances or charges (including charges between intercity rail passenger service facilities), or rules or regulations pertaining thereto, for or in connection with or incidental to transportation in part upon intercity rail passenger service facilities. Intercity rail passenger service facilities include the right of way and related trackage, rails, cars, locomotives, or other rolling stock, signal, power, fuel, communication and ventilation systems, power plants, stations, terminals, storage yards, repair and maintenance shops, yards, equipment and parts, offices and other real estate or personnel used or held for or incidental to the operation, rehabilitation or improvement of any railroad operating intercity rail passenger service or to operate such service, including but not limited to buildings, structures, and rail property.

* NB Effective until the enactment into law by the state of New Jersey of certain legislation (see chapter 108/2019 § 10 sb (a))

* 2. The commissioner shall coordinate the intercity rail passenger

activities of the state and other interested public and private organizations and persons to effectuate the purposes of this section and shall have the responsibility for negotiating with the federal government with respect to intercity rail passenger service programs. The commissioner is authorized to enter into joint service agreements and other agreements between the state and any railroad company, any other state department or agency, the federal government, the Canadian government, any other state, or agency or instrumentality thereof, any public authority of this state or any other state or two or more states, or any political subdivision or municipality of the state, relating to property, buildings, structures, facilities, services, rates, fares, classifications, dividends, allowances or charges (including charges between intercity rail passenger service facilities), or rules or regulations pertaining thereto, for or in connection with or incidental to transportation in part upon intercity rail passenger service facilities. Intercity rail passenger service facilities include the right of way and related trackage, rails, cars, locomotives, or other rolling stock, signal, power, fuel, communication and ventilation systems, power plants, stations, terminals, tunnels, storage yards, repair and maintenance shops, yards, equipment and parts, offices and other real estate or personnel used or held for or incidental to the operation, rehabilitation or improvement of any railroad operating intercity rail passenger service or to operate such service, including but not limited to buildings, structures, and rail property.

* NB Effective upon the enactment into law by the state of New Jersey of certain legislation and repealed 15 years from effective date but only repealed if federal funding that is necessary has not been granted (see chapter 108/2019 § 10 sb (a) and sb (c))

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

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

* NB Effective upon the repeal of the amendments enacted by chapter 108 of 2019 § 3 (see chapter 108/2019 § 10 sb (a))

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

* NB Effective until the enactment into law by the state of New Jersey of certain legislation (see chapter 108/2019 § 10 sb (a))

* 3. Notwithstanding any other provision of law, general, special, charter or local, the commissioner may on such terms and conditions as he may determine necessary, convenient or desirable, establish, construct, effectuate, operate, maintain, renovate, improve, extend or repair any such intercity rail passenger service facility or any related services and activities, or may provide for such by contract, lease or other arrangement on such terms as the commissioner may deem necessary,

convenient or desirable with any agency, corporation or person, including but not limited to any railroad company, any state agency, the federal government, the Canadian government, any other state or agency or instrumentality thereof, any public authority of this or any other state or two or more states, or any political subdivision or municipality of the state.

* NB Effective until the enactment into law by the state of New Jersey of certain legislation (see chapter 108/2019 § 10 sb (a))

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

* NB Effective upon the repeal of the amendments enacted by chapter 108 of 2019 § 3 (see chapter 108/2019 § 10 sb (a))

4. Any property, as such is defined in subdivision two of section thirty of the highway law which is necessary for the purposes of this subdivision may be acquired by the commissioner in the same manner as property is acquired for state highway purposes pursuant to the provisions of section thirty of the highway law.

5. To avoid duplication of effort and in the interests of economy, the commissioner may make use of existing studies, surveys, plans, data and other materials in the possession of any state agency or municipality or political subdivision of the state in order to carry out the purposes of this section. Each such agency, municipality or subdivision is hereby authorized to make the same available to the commissioner and otherwise to assist him in the performance of his functions.

§ 14-d. Rail service preservation. 1. Authorization is hereby given to the commissioner of transportation:

a. to acquire, by purchase, gift, grant, transfer, contract or lease, any rail transportation facility with the state, or any part thereof, or the use thereof, and to utilize any such rail transportation facility, or any property acquired pursuant to the provisions of section eighteen of this chapter, for the purposes of rail transportation service thereon or therewith;

b. to enter into contracts with any person, firm, corporation or agency, including but not limited to any railroad company, state agency, the federal government, the Canadian government, any other state or agency or instrumentality thereof, any public authority of this or any other state, or any political subdivision or municipality of the state, for the purpose of providing, maintaining and improving rail transportation service on the rail transportation facilities thereof;

c. to sell, lease or otherwise contract for the utilization of any rail transportation facilities, or portion thereof, owned or acquired pursuant to this section or pursuant to section eighteen of this chapter, for the purpose of providing for, maintaining and improving rail transportation service thereon.

* d. to acquire by eminent domain, pursuant to the eminent domain procedure law and section thirty of the highway law, any property, property rights or property interests, including easements, air rights and subsurface rights, whether or not now or previously designated as parkland, or otherwise dedicated to a public use as parkland, (hereinafter "property interests"), and, provided with respect to real property now or previously designated as parkland, just compensation therefor shall be calculated as an amount equal to the appraised fair market value of the parkland being discontinued, and further provided only to the extent that such property interests are, in the judgement of the commissioner, necessary for the construction, use, occupancy, operation, and maintenance of an airport access mass transit facility for LaGuardia airport via elevated guideway, and related ancillary facilities for airport access mass transit maintenance, parking for

persons using the airport access mass transit facility and additional limited purposes directly related to operation of an airport access mass transit project, temporary laydown and construction areas, and air rights and subsurface rights related to an elevated guideway, including appropriate entry and exit points for users of the airport access mass transit facility and any property interests necessary for an adjustment of the piers supporting the pedestrian bridges crossing the Grand Central Parkway to maintain accessibility, and any vehicle entry and exit points to the Grand Central Parkway located along either side of the corridor, in all cases running along a route from LaGuardia airport on or near the Grand Central Parkway, thence along the edge of the Citi Field parking lot previously alienated for stadium use, next alongside the existing elevated track for the No. 7 subway and terminating at subway rail yards and other transportation staging and storage areas within a corridor more specifically defined pursuant to section three hundred forty-nine-g of the highway law; and to utilize, or sell, lease, contract, or otherwise transfer the acquired property interests together with property interests it otherwise holds and/or grant easements, licenses, permits, concessions or other authorizations, to the Port Authority of New York and New Jersey to facilitate the construction (including temporary laydown), and permanent use, occupancy, operation, and maintenance of the airport access mass transit facility, related ancillary facilities for airport access mass transit maintenance, parking for persons using the airport access mass transit facility and additional limited purposes directly related to operation of an airport access mass transit project; provided however, this subdivision does not authorize acquisition of property interests for a self-standing facility constructed to house premises for automobile rental operations.

* NB Repealed June 25, 2028 only if no property interests have been acquired pursuant to chapter 78 of 2018

2. The commissioner, may, subject to the concurrence of the director of the budget:

a. Operate, maintain, renovate, repair, improve, extend or establish any rail transportation facility or any related services and activities, or may provide therefor by contract, lease or other arrangement with any person, firm, corporation or agency, including but not limited to any railroad company, state agency, the federal government, the Canadian government, any other state or agency or instrumentality thereof, any public authority of this or any other state, or any political subdivision or municipality of the state.

b. Enter into joint service agreements on behalf of the state with any railroad company, and any other state department or agency, the federal government, the Canadian government, any other state or agency or instrumentality thereof, any public authority of this state or any other state, or any political subdivision or municipality of the state, relating to property, buildings, structures, facilities, services, rates, fares, classifications, dividends, allowances or charges, or rules or regulations pertaining thereto, for or in connection with or incidental to transportation in part upon rail transportation facilities provided pursuant to this section.

c. Acquire by purchase, gift, grant, transfer, contract or lease any rail transportation facility, or any part thereof, necessary for or incidential to the effectuation of the purposes of this section.

d. Utilize federal monies available or which may become available to the state for the purpose of effectuating the provisions of this section and enter into any necessary agreements required to meet federal standards and criteria in connection therewith.

e. Establish, levy and collect or cause to be established, levied and collected and, in the case of a joint service arrangement, join with others in the establishment, levy and collection of such fares, tolls, rentals, rates, charges and other fees as he may deem necessary, convenient or desirable for the use and operation of any such rail transportation facility and related services.

f. Sell, transfer, lease or contract for the sale, transfer or lease of any rail transportation facility, or any part thereof, necessary for or incidental to the effectuation of the purposes of this section.

g. Do all things necessary, convenient or desirable to carry out the purposes of this section.

3. For the purposes of this section, the term "rail transportation facility" shall include railroad rights of way as well as trackage, rails, cars, locomotives, rolling stock, signal, power, fuel, communication and ventilation systems, power plants, stations, terminals, storage yards, repair and maintenance shops, yards, equipment and parts, offices, and other incidental real estate or personalty used or held for or incidental to the operation, rehabilitation or improvement of any railroad operating rail passenger or rail freight transportation services, or to operate such services, including, but not limited to buildings, structures and rail property.

4. Notwithstanding the provisions of any other general special or local law, expenses of the department of transportation incurred in connection with the provision of rail transportation services as authorized by this section, may, with the approval of the director of the budget, be paid out of the gross revenues, if any, received pursuant to the authorization herein contained. All other revenues surplus to these expenses shall be paid into the state treasury to the credit of the general fund.

§ 14-e. Development of transportation corridors; multiple use outside the counties of Kings and Queens of right of way. The commissioner of transportation shall have power to provide, with or without federal aid, for surveys, studies and plans which include the negotiating for and securing of reservation easements necessary to the development of the corridor through which a transportation facility will pass, in order to jointly direct such development in cooperation with the municipality or municipalities in which such transportation facility is to be constructed and in connection with such construction to provide, to the extent he deems feasible and in the best interest of the state, for multiple use outside the counties of Kings and Queens of the right of way of such transportation facility. Before any such surveys, studies and plans, including the securing of necessary reservation easements relevant to such joint development are commenced, the municipality or municipalities in which the transportation facility is to be constructed shall enter into an agreement with the commissioner concerning the same. The commissioner and the municipality or municipalities in which a transportation facility is to be constructed are hereby authorized to enter into any and all necessary agreements, including provisions for any sharing of costs, to carry out such surveys, studies and plans for joint development, including the negotiating for and securing of reservation easements necessary to such plans from landowners affected thereby, and to provide for multiple use outside the counties of Kings and Queens of transportation rights of way. The expense of such surveys, studies, plans and easements necessary for joint development of such facilities and provision for multiple use of such rights of way shall be a proper charge against funds available for the construction, reconstruction or maintenance of state transportation facilities. The term "municipality", as used in this subdivision, shall include only a county, town, city or village. The term "joint development", as used in this chapter, shall mean cooperative action by the state department of transportation, federal and other state government agencies and municipalities, with or without the assistance of private organizations and individuals, to prepare surveys, studies and plans, including the negotiating for and securing of reservation easements related to the development or adjustments of land uses which are affected by construction of such facilities as well as the surveys, studies and plans incidental thereto. The term "reservation easements" shall mean rights in real property, of a nature less than fee, which are acquired by the state pursuant to agreement with the owner of such property for the purposes of assuring the availability of such property for a future transportation need and to prevent the use of such property by such owner in a manner inconsistent with such need.

§ 14-f. Transportation of hazardous materials. 1. The commissioner of transportation is hereby authorized to promote safety in the transportation of hazardous materials by all modes of transportation, and in connection therewith shall:

(a) Have the power to make rules and regulations governing transportation of hazardous materials, which shall mean a substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce, by all modes as defined by the rules and regulations of the department.

Such rules and regulations shall be no less protective of public safety than the rules and regulations promulgated by the federal government with respect to the transportation of hazardous materials. The regulations shall set forth the criteria for identifying and listing, and a list of hazardous materials subject to this section as may be amended by the commissioner of transportation from time to time in a manner consistent with the state administrative procedure act and consistent with those substances and materials designated by the United States secretary of transportation as hazardous under section 5103 of title 49 of the United States code as amended from time to time, including those designated as hazardous in the hazardous materials table set forth in section 172.101 and materials that meet the defining criteria for hazard classes and divisions in part 173 of subchapter C of title 49 of the code of federal regulations as amended from time to time. Such regulations shall include specifications for marking and placarding of vehicles transporting hazardous materials as will be applied pursuant to paragraph (a) of subdivision three of this section. The regulations promulgated hereunder shall include notice that a violation of the rules and regulations is subject to a fine or a period of imprisonment, and the rules and regulations shall set forth the penalty provisions contained in subdivision four of this section. Provided, however, that all local laws or ordinances, except those of cities having a population of one million or more, regulating the transportation of flammable liquids in trucks, trailers or semi-trailers, are hereby superseded and without force and hereafter no such local law or ordinance shall be adopted to regulate or control the equipment or means of transporting flammable liquids in trucks, trailers or semi-trailers.

For the purposes of this section, a "vehicle" shall mean every device in which property may be transported upon a highway, stationary rails or tracks, or on the navigable waterways of the state.

(b) Have power to enforce said rules and regulations through the use of department staff or others pursuant to cooperative agreement.

(c) Have power and is hereby authorized to enter into cooperative agreements with agencies of this and other states and of the federal government in relation to enforcement of said rules and regulations.

(d) Consult with and receive the full cooperation from the commissioner of environmental conservation and other agencies in order to aid the commissioner of transportation in establishing an information system capable of identifying the amount and type of hazardous materials transported in New York, and the methods used for transporting such materials. This system shall be established and maintained in order to assess the volume and potential danger of hazardous materials transported in commerce, by all modes.

(e) Establish and publicize, after consultation with the commissioner of environmental conservation, a public education program to provide publications and technical assistance regarding the regulations governing the transportation of hazardous materials.

(f) Develop a training program for the state police and environmental conservation officers in order to aid such officers in the enforcement of the rules and regulations made pursuant to this section.

2. It shall be unlawful for any person, corporation, company, association, partnership or any officer or agent thereof to transport or cause to be transported hazardous materials in violation of the rules and regulations promulgated by the commissioner pursuant to this section.

3. (a) It shall be unlawful for any person, corporation, company, association, partnership or any officer or agent thereof to operate or cause to be operated in this state a vehicle transporting hazardous materials unless the vehicle is conspicuously marked or placarded to identify the material transported or its principal hazard in a manner specified in rules and regulations promulgated by the commissioner that are consistent with related federal requirements; provided that the commissioner may, by rules and regulations prescribe with respect to any specific hazardous materials the minimum quantities below which no placard shall be required.

(b) It shall be unlawful for any person, corporation, company, association, partnership or any officer or agent thereof to operate or cause to be operated in this state a vehicle transporting those hazardous wastes identified and listed pursuant to section 27-0903 of the environmental conservation law or those regulated wastes listed and defined pursuant to section 27-0303 of the environmental conservation law unless such person complies with the requirements applicable to the transport of such wastes as set forth in article twenty-seven of the environmental conservation law and any rules and regulations promulgated thereunder.

4. (a) Except as provided in paragraph (b) of this subdivision, any person, corporation, company, association or partnership found guilty of violating any such rule or regulation shall be guilty of a traffic infraction, and all of the provisions of the vehicle and traffic law, except as otherwise specifically provided herein, shall be applicable thereto, and shall be subject to a fine of not less than three hundred fifty dollars nor more than one thousand dollars for the first offense, and upon being found guilty of a second or subsequent offense committed within eighteen months by a fine of not less than one thousand dollars nor more than two thousand five hundred dollars, or by imprisonment for not more than ninety days or by both such fine and imprisonment. Except as otherwise provided by law, such a violation shall not be a crime and the penalty or punishment imposed therefor shall not be deemed for any purpose a criminal penalty or punishment and shall not impose any disability upon or affect or impair the credibility as a witness, or otherwise, of a person found guilty thereof; provided, however, that any person transporting hazardous waste in violation of article twenty-seven of the environmental conservation law shall be subject to the penalties provided in article seventy-one of such law.

(b) Any person, corporation, company, association or partnership found guilty of violating any such rules or regulations involving an out-of-service defect relating to brake systems, steering components and/or coupling devices shall be subject to a fine of not less than five hundred dollars nor more than one thousand five hundred dollars, or by imprisonment for not more than sixty days or by both such fine and imprisonment, and upon being found guilty of a second or subsequent offense committed within eighteen months by a fine of not less than one thousand five hundred dollars nor more than two thousand five hundred dollars, or by imprisonment for not more than ninety days or by both such fine and imprisonment.

(c) Operation of an out-of-service vehicle shall constitute a misdemeanor and shall be punished by a fine of not less than two thousand five hundred dollars nor more than five thousand dollars, or by imprisonment for not more than one year or by both such fine and imprisonment. A conviction for a second or subsequent offense committed within eighteen months shall constitute a class E felony and shall be punished by a fine of not less than three thousand five hundred dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(d) If any person does not appear in response to an appearance ticket or the court's direction, or pay any fine imposed, the commissioner of motor vehicles shall have the power to suspend the registration or privilege of operation of any such vehicle operated or alleged to have been operated in violation of such rules and regulations.

(e) (i) Any complaint issued for an equipment violation, except for a violation involving an out-of-service defect or except for a violation involving the operation of any motor vehicle after it has been placed out of service, shall be dismissed by the court before such summons is returnable if the violation as set forth in the summons is corrected not later than one-half hour after sunset on the first full business day after the issuance of the summons and proof of such correction as set forth in subparagraph (ii) of this paragraph is submitted to the court. For the purposes of this subparagraph, "business day" shall mean any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day and Christmas Day.

(ii) Acceptable proof of repair or adjustment shall consist of submission to the court on or before the return date of the summons of (A) a statement of correction from an officially designated state inspection station duly executed by the person performing or making such inspection and bearing the official stamp of the state inspection station, (B) a statement of correction from an automobile repair shop on the letterhead of such repair shop duly executed by the person who made the correction or (C) a signed statement of any police officer or a department inspector that the necessary corrections have been made. The statement required by this subparagraph shall be directed to the court having jurisdiction of the alleged violation, shall be affirmed as true under penalty of perjury, and shall include the name, occupation and position of the person making the statement, the time and date that the repairs or inspection were made and a statement that the defective equipment, cited in the violation, on the vehicle in question, is in proper working order.

5. With respect to the transportation of radioactive materials, nothing in this section shall be construed to abrogate or effect the provisions of any federal or state statute or local ordinance, regulation or resolution which are more restrictive than or which supersede the provisions of this section.

6. Any police officer having lawfully stopped any vehicle which he has reason to believe is transporting hazardous materials or hazardous waste may require that such vehicle shall be driven to a place designated by such police officer to be inspected pursuant to the provisions of this section and the rules and regulations of the commissioner concerning transportation of hazardous materials or pursuant to title nine of article twenty-seven of the environmental conservation law. Provided, however, that such place designated by such police officer shall not exceed a distance of five miles from the place at which such vehicle was stopped. Furthermore, that when such place designated by such officer or any other place utilized for inspection of vehicles pursuant to this section is a roadside rest area, such rest area shall be kept open for the use of the public to the extent practicable.

§ 14-g. Intercity bus passenger service preservation. 1. Authorization is hereby given to the commissioner of transportation to contract with any person, firm, corporation or agency, including, but not limited to, any intercity bus company, state agency, the federal government, any other state or agency or instrumentality thereof, any public authority of this state or any other state, or any political subdivision or municipality of the state, for the purpose of providing, maintaining and improving intercity bus passenger service within New York state.

2. The commissioner may, subject to the concurrence of the director of the budget:

a. Enter into joint service agreements on behalf of the state with any intercity bus company, the federal government, any other state or agency or instrumentality thereof, any public authority of this state or any other state, or any political subdivision or municipality of the state, relating to property, buildings, structures, facilities, equipment, services, rates, fares, allowances or charges, or rules or regulations pertaining thereto, for or in connection with the provision of intercity bus passenger services, or such local or commuter services as are provided by an intercity bus company.

b. Utilize federal moneys available or which may become available to the state for the purpose of effectuating the provisions of this section, and enter into any necessary agreements required to meet federal regulations, criteria and standards in connection therein.

c. Do all things necessary, convenient or desirable to carry out the purposes of this section.

3. For the purposes of this section, the term "intercity bus passenger service" shall mean transportation provided to the public on a regular and continuing basis by a person, firm, or corporation authorized to transport passengers in interstate commerce by the United States department of transportation or in intrastate commerce by the state department of transportation that is primarily intended to satisfy longer distance travel demand between cities, and villages and unincorporated urban places that have a population of two thousand five hundred or more. Such term does not include services that are primarily local or commuter oriented in nature.

§ 14-h. Airport preservation. 1. In order to preserve and enhance the air transportation system of the state, the commissioner of transportation is hereby authorized:

a. To enter into an agreement with the operator of any privately-owned airport to pay on behalf of the state a share of the project costs of any project undertaken in accordance with the provisions of the federal airport and airway improvement program of the federal aviation administration or any federal program hereafter enacted for the purpose of airport improvement.

b. To utilize for this purpose any funds available for the acquisition, construction, reconstruction or improvement of airports or aviation capital facilities, including but not limited to funds available from the transportation capital facilities bond act of nineteen hundred sixty-seven and the rebuild New York through transportation infrastructure renewal bond act of nineteen hundred eighty-three. Notwithstanding any provisions of law to the contrary, for airports funded pursuant to this section, the owner of a municipal airport may, with the approval of the commissioner, contract directly with the office of general services to provide for the removal of fuel tanks under such terms and conditions as set forth by the office of general services, including provision for the deposit of funds of such airport with the state comptroller, who is authorized to receive and accept the same for the purposes of this paragraph, for expenditure on such project costs or, as appropriate, for the return of any excess deposit to such airport, on vouchers approved by the office of general services.

c. To enter into any agreements necessary to effectuate the provisions of this section and to insure the availability to the public of any airport improved hereunder for the useful life of such improvement as defined in section sixty-one of the state finance law.

d. To receive applications for participation in this program by the operators of privately-owned airports determined by the commissioner to serve a public purpose and to establish standards governing the form, content and submission of such applications, including the requirement that any application submitted under this section by the owner of a privately-owned airport be accompanied by a resolution from the governing body of the municipality in which such airport is located formally endorsing the project for which state aid is requested.

e. To do all things necessary, convenient or desirable to carry out the purposes of this section.

2. The state share of any such improvement project undertaken with federal assistance from the federal aviation administration shall be limited to seventy-five percent of the non-federal share of such approved project.

3. Whenever a property owner intends to dispose of, sell, lease or otherwise transfer any or all of its interest in an air transportation facility and such disposal, sale, lease or transfer shall result in that facility no longer having as its principal function aviation operations or support, such owner shall notify the department in writing of its intention to transfer such interest on or before ninety days prior to such transfer.

§ 14-i. Long Island expressway; design and construction. 1. The commissioner shall prepare an environmental impact statement on the project to add travel lanes to the Long Island expressway between exits forty-nine and fifty-seven in accordance with the provisions of article eight of the environmental conservation law.

2. The commissioner shall prepare an environmental impact statement on projects to add travel lanes to the Long Island expressway from exits thirty to sixty-four in accordance with the provisions of article eight of the environmental conservation law.

3. Notwithstanding any other provision of law to the contrary, a project to add travel lanes to the Long Island expressway between exits forty-nine and fifty-seven shall, for the purposes of this section, be deemed to have independent utility and not be deemed part of any

long-range plan and other potential highway improvement projects on Long Island are not to be deemed likely to be undertaken as a result thereof or to be dependent thereon.

4. a. The design for the project to add travel lanes to the Long Island expressway between exits forty-nine and fifty-seven, shall commence forthwith. Such design shall proceed concurrent with the environmental review process required by subdivision one of this section, and may, to the extent necessary, focus on a design alternative or alternatives. Preparation of a design shall not be a commitment to an action by the department prior to the completion of the environmental review process.

b. The department shall not commence construction until the department has considered the final environmental impact statement and made findings pursuant to subdivision one of this section.

c. The preparation of a design or designs shall not be deemed to have prejudiced any decision-making pursuant to article eight of the environmental conservation law.

§ 14-j. Special rail and aviation transportation program. 1. The commissioner is hereby authorized to enter into a contract, lease or agreement with the New York state thruway authority for the financing by such authority of special rail and aviation transportation program as authorized by law.

2. The commissioner is hereby authorized to approve funding for the costs for the construction, reconstruction, improvement, reconditioning and preservation of rail freight facilities and for the cost of intercity rail passenger facilities and equipment. For rail freight projects, the commissioner shall give priority to projects which are coordinated with community economic development objectives, improve the safety of rail operations, promote intermodal services, provide rail access to relieve highway congestion, provide for the efficient restructuring of urban rail facilities or facilitate the transition of

branch lines from large operations to shortline operations. For intercity rail passenger facilities and equipment projects, priority will be given to projects which improve the quality, performance, speed and safety of intercity rail services.

3. The commissioner is hereby authorized to approve funding for the cost of construction, reconstruction, improvement, reconditioning and preservation of municipal airports, privately owned airports and aviation capital facilities, excluding airports owned by the state or operated by a bi-state public benefit corporation, for which federal funding is not available provided projects are part of an approved airport layout plan. Such improvements shall include, but not be limited to, acquisition of certain traffic control navigational aids utilizing the global positioning system technologies and applications.

Notwithstanding any provisions of law to the contrary, for airports funded pursuant to this section, the owner of a municipal airport may, with the approval of the commissioner, contract directly with the office of general services to provide for the removal of fuel tanks under such terms and conditions as set forth by the office of general services, including provision for the deposit of funds of such airport with the state comptroller, who is authorized to receive and accept the same for the purposes of this subdivision, for expenditure on such project costs or, as appropriate, for the return of any excess deposit to such airport, on vouchers approved by the office of general services.

4. The program shall provide forty million dollars to be made available as follows:

	Rail	Aviation
State Fiscal Year 1993-1994	$7.5 million	$2.5 million
State Fiscal Year 1994-1995	$7.5 million	$2.5 million
State Fiscal Year 1995-1996	$7.5 million	$2.5 million
State Fiscal Year 1996-1997	$7.5 million	$2.5 million

§ 14-k. Multi-modal program. 1. There is hereby established the "multi-modal program". The commissioner is hereby authorized to enter into a contract, lease or agreement with the New York state thruway authority for the financing by such authority of the multi-modal program as authorized by law.

2. Program funds shall be provided pursuant to annual appropriation or pursuant to authorization by the legislature for capital projects.

3. The commissioner is hereby vested with the authority and responsibility to approve funding for projects authorized in subdivision four of this section. The funding of projects will be made upon application, in a format prescribed by the commissioner, by the project sponsor for funding of prior expenditures.

4. Multi-modal projects shall be limited to:

(a) project costs for construction, reconstruction, improvement, reconditioning and preservation of rail freight facilities and for the project costs of intercity rail passenger facilities and equipment where the service life of the project is at least ten years. Funding of project expenditures for an approved project shall require certification by the project sponsor to the department that the project has a service life of ten or more years. Such certification shall include any such information as may be necessary to maintain, if applicable, the federal tax exempt status of bonds, notes or other obligations issued by the New York state thruway authority for such purposes. The commissioner shall request the project sponsors to furnish such information in writing as may be necessary;

(b) project costs for construction, reconstruction, improvement, reconditioning and preservation of state, municipal, or privately owned ports where the service life of the project is at least ten years. Funding of project expenditures for an approved project shall require certification by the project sponsor to the department that the project has a service life of ten or more years. Such certification shall include any such information as may be necessary to maintain, if applicable, the federal tax exempt status of bonds, notes or other obligations issued by the New York state thruway authority for such purposes. The commissioner shall request the project sponsors to furnish such information in writing as may be necessary;

(c) project costs of construction, reconstruction, improvement, reconditioning and preservation of municipal airports, privately owned airports and aviation capital facilities, excluding airports operated by the state or operated by a bi-state municipal corporate instrumentality, for which federal funding is not available provided the project is consistent with an approved airport layout plan, where the service life of the project is at least ten years. Funding of project expenditures for an approved project shall require certification that the project has a service life of ten or more years. Such certification shall include any such information as may be necessary to maintain, if applicable, the federal tax exempt status of bonds, notes or other obligations issued by the New York state thruway authority for such purposes. The commissioner shall request the project sponsors to furnish such information in writing as may be necessary;

(d) project costs of construction, reconstruction, enhancement, improvement, replacement, reconditioning, restoration, rehabilitation and preservation of state, county, town, city and village roads, highways, parkways and bridges where the service life of the project is at least ten years. Funding of project expenditures for an approved project shall require certification from the project sponsor that:

(i) the project has a service life of ten or more years;

(ii) program funds are not to be used for the mandated non-federal share of federally funded projects;

(iii) the amount of funds requested is no greater than prior unreimbursed municipal project expenditures for work completed or materials incorporated in qualifying projects; and

(iv) the amount of municipal funds appropriated for transportation capital projects by municipalities shall not be reduced because of the availability of these funds.

The commissioner shall request the project sponsors to furnish such information in writing as may be necessary. For the purposes of this section, the Chautauqua, Cattaraugus, Allegany and Steuben southern tier extension railroad authority shall be an authorized project sponsor.

By written agreement between them, a county may act for one or more cities, towns or villages in the implementation of projects eligible for funding pursuant to this paragraph. A copy of such agreement shall be filed with the commissioner; and

(e) project costs for construction, reconstruction, improvement, reconditioning and preservation of fixed ferry facilities of municipal and privately owned ferry lines for transportation purposes, where the service life of the project is at least ten years. Funding of the project expenditures for an approved project shall require certification by the project sponsor to the department that the project has a service life of ten or more years. Such certification shall include any such information as may be necessary to maintain, if applicable, the federal tax exempt status of bonds, notes or other obligations issued by the New York state thruway authority for such purposes. The commissioner shall request the project sponsors to furnish such information in writing as may be necessary.

§ 14-1. Airport improvement and revitalization. 1. Notwithstanding any other provision of law to the contrary, an airport improvement and revitalization grant and loan program is established. Such program is established to provide assistance for the revitalization of public use airports through funding of projects or portions thereof, for which sufficient federal capital assistance and required non-federal matching funding is not available and provided the project is consistent with the airport layout plan approved by the department. The funding of capital improvements pursuant to this section shall not be used to provide the non-federal matching share for federal airport capital improvement grants.

2. (a) Assistance may consist of grants and loans for capital improvements and technical assistance provided by the department pursuant to this section.

Loans and grants pursuant to this section may be made to any municipal corporation, public authority, public benefit corporation or any combination thereof, or to other owners of a public use airport for the purpose of improving a public use airport. A county, pursuant to a written agreement, may act on behalf of one or more cities, towns or villages for the purposes of this section. No such assistance shall be provided to any airport operated by a bi-state authority.

(b) Improvements pursuant to this section may be made for the following purposes:

(i) construction, reconstruction, improvement, reconditioning and preservation of capital facilities where the service life of the project is at least ten years, and related engineering services provided, however, that for pavement management projects the service life of the project shall be at least five years;

(ii) purchase of airport equipment, including navigational aids, acquisition of land and easements; and

(iii) technical assistance for airports including, but not limited to, preparation of studies to attract, retain or improve air carrier or air cargo services including low fare commercial service air carrier services, airport business plans, activities to inform the general public or public and private organizations of the availability and economic impact of the airport and the aviation services at the airport on the community.

(c) Assistance pursuant to this section shall be provided pursuant to contract with the commissioner. Contracts for capital improvements shall insure the availability to the public of any airport improved hereunder for the useful life of such improvement as defined in section sixty-one of the state finance law. The commissioner shall establish standards governing the form, content and submission of applications for participation in this program. Such standards shall include, but not be limited to, the requirement that, with respect to applications submitted by owners of privately-owned airports, the commissioner shall make a determination that a request submitted by such owners will serve a public purpose and such applications are accompanied by a resolution from the governing body of the county in which such privately-owned airport is located formally endorsing the project for which assistance is requested. The commissioner shall not approve an application for a grant or loan unless the applicant can demonstrate commitment of sufficient funds to provide the match set forth in paragraph (d) of this subdivision.

All loans shall be repaid within ten years and bear such rate of interest as shall be established therefor by the commissioner upon the issuance of the loan; provided, however, such rate shall not exceed six percent per annum. Payments on all loans shall be made to the department and credited to the airport improvement and revitalization fund established pursuant to section eighty-eight-d of the state finance law.

(d) Matching ratios. (i) Capital grants and loans. State assistance for the program shall cover the following share of the project cost: for general aviation airports and commercial service airports with less than fifty thousand annual enplanements, up to ninety percent; for commercial service airports with fifty thousand or more but less than seven hundred thousand annual enplanements, up to eighty percent; and for commercial service airports with annual enplanements of seven hundred thousand or more, up to seventy percent.

(ii) Technical assistance. Technical assistance may be up to eighty percent of the project cost. Funding for technical assistance shall be limited to general aviation airports and commercial service airports with less than two hundred fifty thousand annual enplanements, provided, however, that such funding may be granted to general aviation airports and commercial service airports, regardless of the number of annual enplanements, for the preparation of studies to attract, retain or improve low fare commercial service air carrier services. The entire cost of regional or statewide studies conducted by or on behalf of the department may be funded.

(e) Funds for assistance pursuant to this section shall be from the airport improvement and revitalization fund established pursuant to section eighty-eight-d of the state finance law. No funds shall be paid pursuant to this section unless the applicant for assistance provides for the required non-state funded share of the costs of a project.

(f) No grant or loan to any eligible applicant shall exceed the sum of two million five hundred thousand dollars, and no part of any such grant or loan shall be used for salaries or for services regularly provided by the applicant for administrative costs in connection with such grant or loan.

(g) On or before May first each year, the commissioner shall submit a report on the immediately preceding fiscal year to the governor, temporary president of the senate and speaker of the assembly showing the total funds available for assistance pursuant to this section, itemization of assistance provided, and the repayments of loans.

(h) No provision of this section shall be deemed to make any applicant ineligible for assistance otherwise available pursuant to section fourteen-h or fourteen-k of this article.

(i) The commissioner may promulgate rules and regulations for the implementation of this section.

§ 14-m. Airport security. 1. For the purposes of this section, the following terms shall have the following meanings: (a) the term "airport" shall have the same meaning as such term is defined in subdivision five of section two hundred forty of the general business law except that such term shall not include any airport operated by a bi-state authority nor any airport with scheduled commercial air carrier service;

(b) the term "aircraft" shall have the same meaning as such term is defined in subdivision one of section two hundred forty of the general business law;

(c) the term "private-use airport" shall mean an airport used exclusively by the owner thereof and persons authorized by such owner;

(d) the term "public-use airport" shall mean an airport available for use by the general public without a requirement for the prior approval of the owner or operator thereof except as may be required by federal law or regulation.

This section shall not be construed to replace or supersede airport security standards required by the United States department of homeland security or transportation security administration or safety standards required by the United States department of transportation or federal aviation administration.

2. Notwithstanding any provision of law to the contrary, in order to enhance security at the airports of the state, each private-use and public-use airport located, in whole or in part, in New York state shall:

(a)(i) Register with the department within one year from the effective date of this section. Such registration shall be valid for a period of three years, and shall be submitted on forms provided by the department which shall contain the following information: the physical and mailing addresses of such airport; the telephone number, facsimile number, and e-mail address of such airport; the name or names and telephone number or numbers of one or more twenty-four hour security contact persons, as designated by such airport; a map showing the location and general boundaries of such airport; and such other information as the department may reasonably prescribe. Such registration also shall be accompanied by the written security plan required pursuant to paragraph (b) of this subdivision.

(ii) Each such airport shall renew its registration with the department every three years. Requests for renewal shall be made on forms supplied by the department and shall not be accepted unless accompanied with an updated written security plan as provided in paragraph (b) of this subdivision.

(b) (i) Each private-use and public-use airport shall document its security procedures in a written security plan that is consistent with the most recent security guidelines for general aviation airports published by the United States transportation security administration. Such plan shall be updated every three years and submitted to the department with each such airport's renewal application for registration. In developing such plan, each airport shall consider the applicable security enhancement recommendations contained in the most recent security guidelines for general aviation airports published by the United States transportation security administration. Each written plan shall include a description of how the airport has addressed each applicable recommendation of such guidelines, and a justification for not adopting any applicable recommendation suggested by such guidelines for the airport's security characteristics. Applicable recommendations from such document should be determined by such airport by using the airport characteristics self-assessment measurement tool available in such document and any other self-assessment tools subsequently issued by the transportation security administration.

(ii) In addition to submitting such plan to the department in compliance with paragraph (a) of this subdivision, each airport shall submit a copy of such plan and all updates thereof to local law enforcement agencies having jurisdiction over such airport, the New York state police, and the New York state office of homeland security.

(c)(i) In addition to the other provisions of this section, private-use airports shall:

(A) require all aircraft to be double-locked, with one lock internal to the aircraft, and one lock external to the aircraft, when such aircraft is not in operation; and

(B) provide that all hangars be locked when not in use.

(ii) In addition to the other provisions of this section, public-use airports shall:

(A) meet all the requirements of private-use airports set forth in subparagraph (i) of this paragraph;

(B) require verification of the identity of all aircraft passengers by the aircraft crew;

(C) maintain a log of all transient aircraft for a minimum of five years;

(D) develop a written list of emergency contacts and telephone numbers, to be available to airport personnel;

(E) restrict the access of unlicensed persons and student pilots to aircraft keys;

(F) require persons renting aircraft to present government-issued identification, which identification shall be in addition to any pilot's license;

(G) post airport security warning signs and advisories where appropriate;

(H) create an emergency locator map, which may be hand-drawn generally to scale, identifying areas such as runways, ramp areas, fence lines, gates, hydrants, emergency shelters, buildings and hazardous materials sites, and provide copies of such map to emergency response agencies serving such airport, to law enforcement agencies having jurisdiction over such airport, and appropriate airport personnel. Whenever there is a physical change involving such areas, such map shall be revised and resubmitted to the aforementioned emergency response and law enforcement agencies and airport personnel within sixty days of such change; and

(I) familiarize local law enforcement with the airport and consult with them in the airport's development of appropriate security procedures.

3. The map required to be created pursuant to clause (H) of subparagraph (ii) of paragraph (c) of subdivision two of this section and the written security plan required pursuant to paragraph (b) of subdivision two of this section shall prominently display the following statement: "This document may contain information that if disclosed could endanger the life or safety of the public, and therefore this document is to be maintained and used in a manner which preserves the confidentiality of the information contained herein in a manner consistent with law."

4. A person or entity who submits or otherwise makes available to any state agency or agency of any subdivision thereof the registrations and security plans produced pursuant to the requirements of this section may at any time identify those records or portions thereof that contain critical security information and request that the agency that maintains such records except such information from disclosure pursuant to subparagraph one-a of paragraph (a) of subdivision five of section eighty-nine of the public officers law.

§ 14-n. Information concerning services for human trafficking victims in commercial service airports and general aviation airports. 1. The operator of a commercial service airport and the operator of a general aviation airport shall make available in the public restrooms and in any lactation rooms, in plain view and in a conspicuous place and manner, informational cards and/or signs developed by:

(a) the office of temporary and disability assistance in consultation with the New York state interagency task force on human trafficking; or

(b) the United States Department of Homeland Security.

2. All such informational cards and signs shall only contain information concerning services for human trafficking victims and shall prominently include the national human trafficking hotline telephone number.

3. The provisions of this section shall not apply to any airport operated by a bi-state authority.

4. For the purposes of this section, the following terms shall have the following meanings:

(a) "airport" shall mean an area of land or water used or intended to be used for the landing and taking off of aircraft, an appurtenant area used or intended to be used for airport buildings or other airport facilities or rights of way, and airport buildings and facilities located in any of those areas. Such term shall include heliports;

(b) "commercial service airport" shall mean a public airport or a public-use airport in the state that, as determined by the United States secretary of transportation, has at least twenty-five hundred passenger boardings each year and is receiving scheduled passenger aircraft service;

(c) "general aviation airport" shall mean a public airport or a public-use airport with passenger boardings in the state that, as determined by the United States secretary of transportation, either: (i) does not have scheduled service; or (ii) has scheduled service with less than twenty-five hundred passenger boardings each year;

(d) "lactation room" shall mean a hygienic place, other than a restroom, that is: (i) shielded from view; (ii) free from intrusion; (iii) contains a chair, a working surface, and, if the building is otherwise supplied with electricity, an electrical outlet; and (iv) intended to be used for the primary purpose of breastfeeding or expressing breast milk;

(e) "passenger boardings" shall mean revenue passenger boardings in the prior calendar year on an aircraft in service in air commerce, as the United States secretary of transportation determines, including passengers who continue on an aircraft in international flight that stops at an airport in the state for a nontraffic purpose;

(f) "public airport" means an airport used or intended to be used for public purposes: (i) that is under the control of the state, a county, city, town, or village or a state or local authority; and (ii) of which the area used or intended to be used for the landing, taking off, or surface maneuvering of aircraft is publicly owned. Provided, however, such term shall not include any airport operated by a bi-state authority; and

(g) "public-use airport" shall mean an airport available for use by the general public without a requirement for the prior approval of the owner or operator thereof except as may be required by federal law or regulation.

§ 15. Comprehensive statewide master plan for transportation. 1. The department shall formulate and from time to time revise a long-range comprehensive statewide master plan for the balanced development and coordination of adequate, safe and efficient commuter and general transportation facilities and services in the state at reasonable cost to the people, including, but not limited to, highways, rapid transit, railroad, omnibus, marine and other mass transportation facilities and services, and aviation and airport facilities and services, whether publicly or privately owned, developed, operated or maintained.

2. The department shall submit such plan to the governor, the temporary president of the senate, the speaker of the assembly and to the department of state on or before September first, nineteen hundred sixty-eight, and thereafter shall submit appropriate revisions of such plan to the governor, the temporary president of the senate, the speaker of the assembly and to the department of state from time to time as such revisions are made. The department of state shall review such plan and such revisions and shall submit a report thereon, together with such recommendations as it may deem appropriate, to the governor, the temporary president of the senate and the speaker of the assembly. Such plan and such revisions shall become effective upon approval by the governor and shall serve thereafter as a guide to the public and publicly assisted development of transportation facilities and services in the state.

3. In formulating such plan and any such revisions, the department:

a. shall conduct one or more public hearings;

b. may consult with and cooperate with (i) officials of departments and agencies of the state having duties and responsibilities concerning transportation;

(ii) officials and representatives of public corporations as defined in article one, section three of the general corporation law;

(iii) officials and representatives of the federal government, of neighboring states and of interstate agencies on problems affecting transportation in this state;

(iv) officials and representatives of carriers and transportation facilities and systems in the state; and

(v) persons, organizations and groups utilizing, served by, interested in or concerned with transportation facilities and systems in the state;

c. may request and receive from any department, division, board, bureau, commission or other agency of the state or any political subdivision thereof or any public authority such assistance and data as may be necessary to enable the department to carry out its responsibilities under this section; and

d. may make use of and incorporate in the department's plan, any recognized long-range regional plan for transportation, survey or report developed by any public or private agency.

§ 15-a. Metropolitan planning organization and participants; certain functions. 1. In each urbanized area in which a public transportation system provides services, the existing metropolitan planning organization designated as such by the governor for the purpose of complying with federal statutes, shall be the metropolitan planning organization for the purposes of this section. The metropolitan planning organization shall endorse a program of projects for submission to the administrator of the urban mass transportation administration as a product of the continuing comprehensive planning process.

In all other areas, no such planning organization need be formed. However, the requirements of this section which pertain to the actions of metropolitan planning organizations may be accomplished in such areas by the public transportation system in cooperation with the appropriate officials of the municipalities and counties within the transportation system operating area and in cooperation with the state department of transportation.

2. To develop effective involvement of county and municipal governments in the metropolitan planning process, counties and municipalities participating in each regional metropolitan planning organization shall develop alternative plans for carrying out the provisions of this section at both the regional and subregional level. Such alternative plans shall consider the continuing and comprehensive nature of the planning process; federal and state statutory responsibilities for planning; citizen involvement; transportation system operator participation; and population representation. Participating counties and municipalities shall submit such alternative plans to the governor and the legislature prior to January first, nineteen hundred seventy-six.

3. In addition to its responsibilities stated in subdivision one of this section, the responsibilities of each metropolitan planning organization shall be:

(a) to develop long-range regional transportation plans for submission to the commissioner for consideration for inclusion in the statewide transportation master plan;

(b) to develop and suggest periodic amendments to the master plan to the commissioner;

(c) to consult with and cooperate with local officials and representatives of carriers and transportation facilities and systems within their urbanized area;

(d) to examine the structure, and cost of transit operations;

(e) to endorse long-range plans assuring maximum utilization and integration of mass transportation facilities and services throughout the State;

(f) to study the long-range financial needs for improving public transportation systems; and

(g) to conduct one or more public hearings to carry out the provisions of this subdivision.

4. To provide for the existence of a transit development program, the metropolitan planning organization shall consult with other planning

agencies and coordinate its transportation planning process with the comprehensive regional plan developed by the regional planning commission.

§ 15-b. New York city accessible transportation system; New York city transportation disabled committee. 1. Definitions. When used in this section:

a. "Authority" shall mean the New York city transit authority and its subsidiaries.

b. "Committee" shall mean the New York city transportation disabled committee established pursuant to subdivision two of this section.

c. "Contractor" shall mean any person, firm, partnership, association, corporation, or any state agency, public authority, political subdivision or municipality of this state which enters into a contract related to the provision of paratransit transportation in accordance with the provisions of this section.

d. "Paratransit transportation" shall mean specialized demand-responsive, shared-ride revenue services provided to transportation disabled persons on a regular and continuing basis.

e. "Rapid transit station" shall mean any facility located along a rapid transit railway designed and used under normal operating conditions by patrons of such rapid transit railway to gain access to and egress from such rapid transit railway, including any portion therein, together with the devices and appurtenances, facilities and equipment thereof and other instrumentalities used or useful therefor or in connection therewith.

f. "Transportation disabled person" shall mean any individual, including individuals in wheelchairs, who, by reason of illness, injury, age or other semi-permanent or permanent incapacity or disability, is unable to utilize mass transportation facilities without special facilities, equipment or special planning or design.

2. New York city accessible transportation disabled committee. a. To assist in the development of an integrated New York city accessible transportation system, hereinafter referred to as the "system", a New York city transportation disabled committee is hereby created. Such committee shall consist of an advisor to the mayor of the city of New York on transportation, the director of the mayor's office of the handicapped in the city of New York, the commissioner of the department for the aging in the city of New York, the commissioner of the state department of transportation, the state advocate for the disabled, the director of the state office for the aging, four transportation disabled persons who reside or work in the city of New York to be appointed by the governor, two of which shall be so appointed upon the recommendation of the mayor of the city of New York, and one individual who resides or works in the city of New York and who has experience with transportation services for transportation disabled persons to be appointed by the governor, upon the recommendation of the mayor. The mayor of the city of New York shall select one person from among the voting members of the committee who shall serve as chairperson of the committee at the pleasure of the mayor of the city of New York.

The appointed membership shall serve four year terms. If a vacancy in the appointed membership shall occur by reason of the death, disqualification, resignation, or removal of a member, a successor shall be appointed by the governor or the mayor for the unexpired term by the same procedure used to appoint the predecessor.

The governor may remove any member for inefficiency, neglect of duty or misconduct in office after giving him a copy of the charges against him and an opportunity to be heard, in person or by counsel in his defense, upon not less than ten days' notice.

b. No more than three percent of funding available for paratransit transportation may be used for purposes of administering the powers and duties of the committee. Each member of the committee shall receive reimbursement for actual and necessary expenses incurred in the performance of committee duties except that no officer or employee of the state, the city or a public authority shall be entitled to such expense reimbursement.

c. A majority of the whole number of voting members of the committee shall constitute a quorum for the transaction of the committee's business. The committee shall have the power to act by a majority vote of the members. Ex officio members may designate an alternate, who shall have the full power to act on behalf of the official.

d. Meetings of the committee shall take place at least once every month for a period of one year following the effective date of this section unless waived in writing by a majority of the members of the committee. Thereafter, meetings of the committee shall take place at least once every three months unless waived in writing by a majority of the members of the committee.

e. Notwithstanding any inconsistent provision of this or any other law, general, special or local, no officer or employee of the state, or of any public corporation as defined in the general construction law, shall be deemed to have forfeited or shall forfeit their office or employment or any benefits provided under the retirement and social security law or under any public retirement system maintained by the state or its subdivisions by reason of the acceptance of membership on the committee.

f. The committee is authorized to employ, contract for or utilize the services of any person, firm, partnership, association, corporation, governmental agency, or authority that has an expertise in planning transportation services for transportation disabled persons to carry out its powers and duties authorized or mandated pursuant to the provisions of this section.

3. Accessible rapid transit stations. a. The New York city accessible transportation system shall include access by individuals with disabilities to rapid transit services through the renovation of one hundred stations, as set forth in paragraphs b, c and d of this

subdivision, by a date no later than July twenty-sixth, two thousand twenty, pursuant to a schedule as approved by the United States department of transportation, federal transit administration, in a key station plan to be submitted by the metropolitan transportation authority in accordance with the key station plan provisions of the federal Americans with Disabilities Act of 1990.

b. The following rapid transit stations shall be made accessible, except that stations may be substituted in accordance with the provisions of paragraph d of this subdivision: in the county of New York: (1) Brooklyn Bridge on the 4, 5, 6 lines, (2) Grand Central on the 4, 5, 6 lines, (3) Grand Central on the number 7 line, (4) 125th street on the A, B, C, D lines, (5) Herald Square on the B, D, F, Q lines, (6) Times Square on the 1, 2, 3, 9 lines, (7) Times Square on the 7 line, (8) Herald Square on the N, R lines, (9) Times Square on the N, R lines, (10) 42nd street on the A, C, E lines, (11) 51st street on the 6 line, (12) World Trade Center on the C, E lines, (13) 175th street on the A line, (14) Chambers street on the 1, 2, 3, 9 lines, (15) 59th street on the 1, 9 lines, (16) 59th street on the A, B, C, D lines, (17) 34th street on the A, C, E lines, (18) 168th street on the A, B, C lines, (19) Broad street on the J, M, Z lines, (20) 207th street on the A line, (21) 135th street on the 2, 3 lines, (22) 72nd street on the 1, 2, 3, 9 lines, (23) Lexington-3rd avenue on the E, F lines, (24) 47-50th streets on the B, D, F, Q lines, (25) Times Square on the S line, (26) Grand Central on the S line, (27) 14th street on the A, C, E lines, (28) 8th avenue on the L line, (29) 96th street on the 1, 2, 3, 9 lines, (30) 68th street on the 6 line, (31) 57th street on the N, R lines, (32) 23rd street on the 6 line, (33) Cortlandt street on the N, R lines, (34) Bowling Green on the 4, 5 lines, (35) West 4th street on the A, C, E lines, (36) 34th street on the 1, 2, 3, 9 lines, (37) 125th street on the 4, 5, 6 lines, (38) Union Square on the L, N, R lines; in the county of the Bronx, (39) 149th street and Third avenue on the 2, 5 lines, (40) Pelham Bay Park on the 6 line, (41) Simpson street on the 2, 5 lines, (42) 161st street on the 4 line, (43) 161st street on the C, D lines, (44) 231st street on the 1, 9 lines, (45) Fordham road on the 4 line, (46) Pelham Parkway on the 2, 5 lines, (47) Hunts Point avenue on the 6 line, (48) Gun Hill road on the 5 line, (49) Kingsbridge road on the C, D lines, (50) 233rd street on the 2, 5 lines; in the county of Kings: (51) Borough Hall on the 2, 3 lines, (52) Stillwell avenue on the B line, (53) Atlantic avenue on the 2, 3 lines, (54) Pacific street on the B, M, N, R lines, (55) Atlantic avenue on the D, Q lines, (56) Jay street on the A, C, F lines, (57) Utica avenue on the 3, 4 lines, (58) 95th street on the R Line, (59) Euclid avenue on the A, C lines, (60) Church avenue on the F line, (61) DeKalb avenue on the D, M, N, Q, R lines, (62) Flatbush avenue on the 2, 5 lines, (63) Marcy avenue on the J, M, Z lines, (64) Church Avenue on the D, Q lines, (65) Greenpoint avenue on the G line, (66) Bedford avenue on the L line, (67) Utica avenue on the A, C lines, (68) Franklin avenue on the A, C lines, (69) Franklin avenue on the S line, (70) Church avenue on the 2, 5 lines, (71) 59th street on the N, R lines, (72) Bay parkway on the B, M lines, (73) Myrtle avenue on the L line, (74) Wyckoff avenue on the M line, (75) Flushing avenue on the J, M lines, (76) Rockaway parkway on the L line; in the county of Queens: (77) Roosevelt avenue on the E, F, G, R lines, (78) 179th street on the F line, (79) 74th street/Broadway on the 7 line, (80) Main street on the 7 line, (81) 61st street-Woodside on the 7 line, (82) Union turnpike/Kew Gardens on the E, F lines, (83) Continental avenue on the E, F, G, R lines, (84) Lefferts boulevard on the A line, (85) Howard Beach on the A line, (86) Astoria boulevard on the N line, (87) Junction boulevard on the 7 line, (88) Queens Plaza on the E, F, G, R lines; and in the county of Richmond: (89) Great Kills on the SIRT line, (90) Dongan Hills on the SIRT line, and (91) St. George on the SIRT line.

c. In addition to the stations listed in paragraph b of this subdivision, by a date no later than July twenty-sixth, two thousand twenty, the authority shall make accessible nine stations to be selected after the effective date of the statute by the authority in consultation with the transportation disabled committee.

d. The authority shall prepare and submit to the transportation disabled committee for approval, not later than one hundred days after enactment, a plan which provides a schedule for the implementation of the provisions of this subdivision, and such plan shall be the authority's key station plan adopted to implement the Americans with disabilities act of nineteen hundred ninety, as amended. The schedule shall provide that not less than two-thirds of the rapid transit stations specified in paragraph b of this subdivision shall be made accessible to individuals with disabilities in conformance with applicable construction codes not later than December thirty-first, two thousand ten, and that accessibility of all rapid transit stations specified in such paragraph is completed by December thirty-first, two thousand twenty.

e. On or before December thirty-first, nineteen hundred ninety-five, and annually thereafter, the authority shall submit a report which has been approved by the transportation disabled committee to the governor, the temporary president of the senate, the minority leader of the senate, the speaker of the assembly, the minority leader of the assembly, the mayor of the city of New York and the city council of the city of New York. Each such report shall describe the progress that has been made during the reporting period in implementing the provisions of this subdivision.

f. If the authority determines that it is not feasible to make accessible any station listed in paragraph b of this subdivision, another station may be substituted by the authority with the approval of the transportation disabled committee. The authority shall notify the committee in writing that it intends to seek approval for a substitute key station. The committee, after providing an opportunity for public comment of not less than fifteen days or more than thirty days, shall within ninety days of the notification by the authority approve the substitution or recommend an alternate station for feasibility consideration by the authority. Failure of the committee to act within ninety days of the notification shall be deemed an approval of the authority's proposed substitution.

4. Accessible buses. The system shall include access by transportation disabled persons, including persons in wheelchairs, to not less than sixty-five percent of buses in the regularly operated fleet of the authority, which shall be properly operated and maintained to facilitate their use by transportation disabled persons. To meet this sixty-five

percent requirement, all buses purchased, leased, or otherwise brought newly into service on the bus lines of the authority and its subsidiaries, except buses leased or otherwise put into service to relieve temporary, unplanned shortages of buses in service, shall be accessible to transportation disabled persons until the sixty-five percent requirement is met.

5. Paratransit transportation. a. The committee shall develop an implementation plan for the provision of paratransit transportation in each county wholly contained within the city of New York in a manner that is economical and efficient and that is directed toward achieving optimal integration of paratransit transportation with the accessible transportation system and with other transportation services accessible to the disabled and avoiding duplication of services. Such plan shall provide for the orderly provision of paratransit transportation consistent with available resources. On or before April first, nineteen hundred eighty-six, such plan shall be completed and forwarded to the governor, the temporary president of the senate, the minority leader of the senate, the speaker of the assembly, the minority leader of the assembly, the mayor of the city of New York, the city council of the city of New York, and the chairman of the metropolitan transportation authority. The plan shall include:

(1) Service areas and routes. In determining such areas and routes, the committee shall consider:

(a) Residential concentrations of transportation disabled persons and their employment, medical, educational and recreational needs;

(b) Areas or groups in the city of New York that will not be served by accessible rapid transit or accessible buses;

(c) Any studies, master plans, surveys, data and other materials completed by or under development by any state agency or authority or the city of New York;

(d) Existing transportation services operating in the city of New York that are available to transportation disabled persons; and

(e) Other criteria relevant to the effective provision of paratransit transportation.

(2) Hours of service. In determining such hours, the committee shall consider the employment, medical, educational and recreational needs of

transportation disabled persons.

(3) Identification. Identification of criteria for eligibility for, and ridership and cost levels associated with paratransit transportation as provided under the implementation plan.

(4) Financing sources. Such sources shall include:

(a) Fares, and other charges for paratransit transportation. In determining such fares and other charges the committee shall consider the nature of such services, the cost and expense of maintaining paratransit facilities in good condition and repair and the capital and operating expenses of the contractor. Fares for paratransit transportation shall be set at levels based on the criteria set forth in this section;

(b) Any payments receivable or available under title XVIII or XIX of the federal social security act and any other sources of federal funding, including third-party payments;

(c) Appropriate sources of local funding; and

(d) Any gift, grant, bequest, or devise.

(5) A method to acquire by purchase, gift, grant, transfer, contract or lease, any vehicles, equipment or facilities necessary for the provision of paratransit transportation. In determining such method the committee shall develop a plan under which every effort is made to acquire such vehicles, equipment, or facilities that are produced and/or provided by services performed in the state of New York.

(6) Elements necessary. Any other element deemed by the committee to be necessary or desirable to the provision of paratransit transportation.

b. An agency of the city of New York designated by the mayor of the city of New York, provided that such agency shall not be the authority or its subsidiaries, shall provide paratransit transportation in consultation with the committee and in accordance with the paratransit transportation implementation plan developed pursuant to this subdivision, within ninety days of receipt of the plan by the mayor. Such services shall be provided under purchase of service agreements with any responsible person, firm, partnership, association, corporation, governmental agency or authority based on a competitive bidding process. No such service agreement shall be entered into without the approval of the committee. The agency shall not enter into any service agreement that is in excess of financing sources that are reasonably available as identified in paragraph four of this subdivision and the amounts provided pursuant to sections W46-2.0 and II 46-4.0 of the administrative code of the city of New York. In determining whether a proposed contractor is responsible, the designated city agency shall consider but not be limited to the following factors: (1) demonstration of an ability to provide the requested services, (2) compliance with or ability to meet acceptable safety standards, (3) demonstration of sound financial position and acceptable financial reporting, and (4) compliance with applicable local laws and regulations including those related to disadvantaged business enterprises. The agency may use no more than three percent of the funds available for paratransit transportation to cover the cost of program administration.

6. Report. On or before December thirty-first, nineteen hundred eighty-six, and annually thereafter, the committee shall report to the governor, the temporary president of the senate, the minority leader of the senate, the speaker of the assembly, the minority leader of the assembly, the mayor of the city of New York, the city council of the city of New York, and the metropolitan transportation authority. Each such report shall:

a. Describe the progress that has been made during the reporting period on implementation of the requirements of this section, including costs and usage estimates attributable thereto, in relation to achieving an integrated accessible transportation system in the city of New York, including the provision of paratransit transportation throughout each county wholly contained within the city of New York;

b. Assess the need for changes in the system based on technological advances and other changing conditions and make recommendations for coordination of the system with other public transportation and specialized transportation services in the region; and

c. Include such other elements as may be deemed necessary to evaluate the effectiveness of the system.

7. Inconsistent provisions. Insofar as the provisions of this section are inconsistent with the provisions of any other law, general, special or local, the provisions of this section shall be controlling. However, the provisions of this section shall be implemented in such manner to ensure compliance with federal legislative and administrative funding eligibility requirements regarding the transportation disabled.

8. Severability. If any provision of this section or the application thereof to any person or circumstances shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered, and shall not affect or invalidate the remainder of any provision of this section or the application of any part thereof to any other person or circumstance and to this end the provisions of each subdivision of this section are hereby declared to be severable.

§ 15-c. Accessible public transportation. 1. Definitions. When used in this section:

a. "Transportation provider" shall mean the Niagara frontier transportation authority, the Rochester-Genesee transportation authority, the capital district transportation authority, the central New York regional transportation authority, the Utica transit authority, the metropolitan suburban bus authority, Suffolk county, Westchester county and Broome county.

b. "Committee" shall mean the committee for accessible transportation established pursuant to subdivision two of this section.

c. "Transit-disabled person" shall mean any individual who, by reason of illness, age, injury, or congenital malfunction or other permanent or temporary incapacity or disability, is unable, without special facilities, special planning or design, to utilize mass transportation facilities as effectively as members of the general public.

d. "Para-transit" shall mean a transportation service specifically designed to serve the needs of transit disabled persons using special vehicles operating on demand.

e. "Accessible fixed-route service" shall mean a regularly scheduled fixed-route bus service operated by a transportation provider with lift-equipped transit buses.

2. Establishment of committee. a. To assist in the development of an accessible transportation system, a committee for accessible transportation shall be established for each transportation provider. Each committee shall consist of seven persons, including the commissioner of transportation and the state advocate for the disabled, or their designee, and five persons appointed by the governor including one member from the transportation provider and three transit-disabled persons. If the member appointed from the transportation provider ceases to be a member of the provider, such member shall at the same time cease to be a member of the committee. The commissioner of transportation, or the commissioner's designee, shall serve as chairperson.

b. Members of the committee, other than the commissioner of transportation and the state advocate for the disabled, shall serve at the pleasure of the governor. If at any time there is a vacancy in the membership of the committee by reason of death, resignation, disqualification, or otherwise, such vacancy shall be filled in the same manner as the original appointment.

c. A majority of the whole number of members of the committee shall constitute a quorum for the transaction of the committee's business. The committee shall have the power to act by a majority vote of the members.

d. Meetings of the committee shall take place no less than once every two months for a period of fifteen months following the effective date of this section unless waived, in writing, by a majority vote of the members of the committee. Within such fifteen month period, the committee shall, in addition to its regular meetings, hold no less than two public meetings at which the committee shall receive testimony concerning service needs. Thereafter, regular meetings of the committee shall take place no less than every three months unless waived, in writing, by a majority vote of the members of the committee.

3. Committee responsibilities. a. Each committee shall, by July first, nineteen hundred ninety-one, develop an accessible transportation services plan to provide for accessible transportation services at a level sufficient to meet demand in an economic and efficient manner, which coordinates, to the maximum extent possible, accessible fixed-route services, para-transit, accessible rapid transit, and other transportation services available to transit-disabled persons, as appropriate.

b. The accessible transportation services plan shall include service criteria for the provision of para-transit services.

c. The plan shall also include:

(i) service areas and routes which shall reflect residential distributions of transit-disabled persons and existing transportation services operating in the transportation provider's service area that are accessible to transit-disabled persons;

(ii) eligibility for use of para-transit;

(iii) hours and days of operation;

(iv) available financing, including farebox revenue;

(v) passenger and mileage data;

(vi) vehicle hours of operation;

(vii) a financial analysis and comparison of projected capital and operating costs, a revenue plan to cover any additional costs within resources otherwise available to the transportation provider and a determination of the effectiveness of any proposed accessible fixed-route service and alternative para-transit; and

(viii) any other information deemed appropriate. The committee shall consult on such plan with the metropolitan planning organization, and following such consultation, shall recommend the plan to the transportation provider for implementation.

4. Required level of fixed-route accessibility. a. Each transportation

provider shall provide access to one hundred percent of its regularly-operated buses that provide local, fixed-route service. To implement this requirement on and after the effective date of this section, all buses purchased, leased or otherwise brought into service on the bus lines of each transportation provider shall be lift-equipped except any bus which a provider has under contract of purchase on July first, nineteen hundred ninety for delivery after that date. Such lift-equipped buses shall be properly operated and maintained to facilitate their use by transit-disabled persons.

b. The provisions of paragraph a of this subdivision shall not apply to buses that are purchased, leased or otherwise brought into service that have a useful life of six years or less.

5. Required level of para-transit service. a. Within thirty days after the submission of the accessible transportation services plan, the transportation provider shall, with respect to that portion of the plan setting forth service criteria for para-transit service, approve such criteria, request amendments to the criteria or reject such criteria. If the transportation provider approves the criteria, it shall proceed to implement such criteria. If the transportation provider requests amendments to the criteria, the committee shall consider such request and, no later than thirty days following such request, submit either amended criteria or the initial criteria. Within fifteen days of such submission, the transportation provider shall either approve or reject the criteria, as resubmitted. If the transportation provider rejects the criteria, it shall be subject to the provisions of paragraph b of this subdivision. This schedule may be modified by mutual consent of the committee and the transportation provider.

b. If a transportation provider rejects the service criteria submitted by the committee, the transportation provider shall, subject to the provisions of paragraphs c and d of this subdivision, provide the following minimum level of para-transit service:

(i) For transportation providers operating up to fifty buses, para-transit services shall operate with a para-transit fleet of no less than ten percent of the provider's fixed route fleet, but in no event less than one vehicle;

(ii) For transportation providers operating fifty-one to one hundred buses, para-transit services shall operate with a para-transit fleet of no less than eight percent of the provider's fixed route fleet, but in no event less than five vehicles;

(iii) For transportation providers operating one hundred one to one hundred fifty buses, para-transit services shall operate with a para-transit fleet of no less than six percent of the provider's fixed route fleet, but in no event less than eight vehicles; and

(iv) For transportation providers operating in excess of one hundred fifty buses, para-transit services shall operate with a para-transit fleet of no less than five percent of the provider's fixed route fleet, but in no event less than nine vehicles.

c. Each provider shall begin implementing the requirements of paragraph a of this subdivision upon the committee's submission of an accessible transportation service plan and shall fully implement such requirements no later than three years thereafter; provided, however, that each provider must fully implement such requirements by December first, nineteen hundred ninety-four.

d. In no event shall the amount of a provider's expenditures on para-transit services be less than the amount allocated for para-transit services in a provider's budget for the year nineteen hundred ninety, unless agreed to by the committee.

6. Committee reports. On or before February first, nineteen hundred ninety-three, each committee shall submit a report to the governor, the president pro tem of the senate, and the speaker of the assembly, which details the progress of the committee in addressing the transportation needs of persons with disabilities and which presents the accessible transportation services plan developed by the committee and recommended to the metropolitan planning organization and the transportation provider.

7. Technical assistance. The committee shall receive technical assistance from the metropolitan planning organization, the department

of transportation, the transportation provider, the office of the advocate for the disabled, and any other state agency that it determines appropriate.

8. The committee may, by vote of two-thirds of its members cease to exist at any time after December thirty-first, nineteen hundred ninety-five.

9. The commissioner of transportation is authorized to promulgate regulations to carry out the provisions of this section.

§ 16. Delegation of powers and duties. The commissioner may, by official order filed with the department of transportation, delegate any of his powers to or direct any of his duties to be performed by any deputy, director, assistant, officer or employee of such department.

§ 17. State advances to authorities for preparation of plans. 1. Application may be made to the commissioner by an authority for state advances for making studies relating to and preparing preliminary plans and detailed plans and specifications for a project within the state which may be undertaken by such authority. Upon approval of such application by the commissioner, the commissioner shall allocate out of any moneys available therefor by appropriation such sum as he deems necessary to pay the cost of such studies and the cost of preparing such preliminary plans, but in no event shall the sum allocated for the cost of preparing such preliminary plans exceed one per cent of the cost of construction of such project as estimated by the commissioner at the time such application is approved. Any such application and allocation shall be subject to the approval of the director of the budget.

2. If such an application shall have been approved as provided in subdivision one, and, if preliminary plans are or have been required and moneys allocated therefor as provided in subdivision one, upon approval of the preliminary plans by the commissioner, an authority may proceed with the preparation of detailed plans and specifications and the

commissioner shall thereupon allocate such sum as he deems necessary to pay the cost of preparing such detailed plans and specifications, but in no event shall the total of the sum so allocated, together with the sum allocated for the preparation of preliminary plans, exceed four per cent of the cost of construction as estimated by the commissioner at the time such preliminary plans are approved. Such allocations shall be subject to the approval of the director of the budget.

3. Whenever an application for a state advance is made by an authority pursuant to this section, the commissioner may in his discretion allocate out of any moneys available therefor by appropriation such additional sum or sums as he may deem necessary to pay the cost of test borings or other extraordinary expenditures which the commissioner may deem desirable. Such allocation shall be subject to the approval of the director of the budget.

4. Plans and specifications, or studies or test borings or other extraordinary expenditures for a project in connection with which an application for an advance made by an authority has been approved, as hereinbefore provided in this section, may be prepared or undertaken by such authority or by private architectural or engineering firms selected by such authority.

5. All moneys paid to any authority pursuant to the provisions of this section shall be treated as advances by the state and shall be repaid to the state. If bonds or other obligations are sold by such an authority for the purpose of financing the construction of such project, and if repayment is not made from other moneys, such advances by the state shall be repaid out of the proceeds of the first bonds or other obligations sold by such authority; if any such project is constructed by such authority without the sale of bonds or other obligations, and if repayment is not made from other moneys, such advances shall be repaid from the revenues of such authority derived from such project; and in any other case such advances shall be repaid from any other funds of the authority not otherwise pledged. Upon receipt of any such moneys by the state they shall be credited by the state comptroller to the post-war reconstruction fund.

6. Any unobligated balance of moneys appropriated and allocated for the purposes of this section remaining at any time may be cancelled by the commissioner with the approval of the director of the budget, and any such balances so cancelled shall be available for the purposes described in the original appropriation from which such allocations were made.

7. The commissioner and the director of the budget may each request and shall each receive from any department, division, board, bureau, commission or agency of the state or of any political subdivision thereof, such assistance and data as will enable them to properly carry out their respective activities under and effectuate the purposes of this section. The department of taxation and finance is authorized to accept and receive from the federal government any moneys which the federal government shall offer to the state to assist it to carry out any of the provisions of this section or undertakings or assistance authorized by it.

§ 17-a. Reports of regional transportation authorities; certain cases. 1. Each regional transportation authority shall submit to the governor, the commissioner, the chairman and ranking minority member of the senate finance committee, and the chairman and ranking minority member of the assembly ways and means committee annually, not later than the first day of October in a manner to be prescribed by the state director of the budget, information on operations and capital construction, setting forth the estimated receipts and expenditures for its next fiscal year and its current fiscal year.

2. In addition to any report required pursuant to subdivision one hereof, each regional transportation authority shall report to the commissioner concerning capital improvement projects in accordance with the provisions of section one hundred nineteen-s of the general municipal law any inconsistent provision of law notwithstanding.

§ 17-b. Public transportation safety plans; filing. 1. Notwithstanding the provisions of subdivision eight of section twelve hundred sixty-six and subdivision seven of section twelve hundred ninety-nine-f of the public authorities law or of subdivision seventeen of section one hundred forty-two of this chapter, every transportation authority and every other public transportation operator or carrier receiving mass transportation operating assistance pursuant to section eighteen-b of this chapter either directly from the department of transportation or through a county or municipality pursuant to said section, shall prepare and publicize a plan for transportation safety, including but not limited to equipment maintenance procedures, personnel safety training programs, accident reporting systems, passenger safety practices and the persons responsible for the implementation of such practices and programs. Every authority and every other public transportation operator or carrier required herein to file such a plan shall review such plan biennially and amend such plan if amendments are necessary.

2. A plan and any amendment thereto, prepared pursuant to the provisions of this section shall be filed with the department at its Albany office. The commissioner, in consultation with the state public transportation safety board shall examine the plan and determine whether the same is satisfactory and feasible. The plan shall be made available to any and all persons, corporations, departments and agencies necessary to enable timely review and solicitation of comments.

3. If within one hundred eighty days of receipt of notice of the provisions of this section from the commissioner and every two years thereafter, any transportation authority or system shall fail to file a plan as required by this section or shall file a plan or amendment which the commissioner determines in consultation with the state public transportation safety board, is unsatisfactory and shall fail to file a substitute plan or amendment within ninety days of the sending of notice of such determination, the commissioner shall be authorized and empowered to withhold from such authority or system payment of any and all state moneys otherwise payable to such authority or system as operating assistance pursuant to section eighteen-b of this chapter in

the next occurring quarter of the state fiscal year.

4. For purposes of this section the term transportation authority shall be deemed to mean and include every public benefit corporation constituting a transportation authority which provides or contracts for the provision of mass transportation services or any subsidiary thereof.

§ 18. Acquisition of abandoned railroad transportation property. 1. Notwithstanding the provisions of any general, special or local law to the contrary, the commissioner shall have a preferential right to acquire, for and in behalf of the people of the state of New York, for use in the future for transportation purposes, as such purposes are set forth in this chapter, the highway law or the canal law, any property as defined in subdivision six of this section and which has been abandoned for railroad transportation purposes as defined in subdivision two of this section. No property owner shall dispose of any such property without having first obtained notification from the commissioner that the preferential right of acquisition granted under this section does not apply, or a release of such preferential right from the commissioner. Conveyances of property in violation of this section shall be null and void. Acquisition of property pursuant to this section shall be in the manner provided by section thirty of the highway law. No acquisition shall be made until the director of the budget shall have issued a certificate of availability of funds therefor. Before any property is acquired pursuant to this section, the commissioner shall determine that it is in the best interests of the state to acquire such property for use in the future for transportation purposes.

1-a. The department of transportation is hereby designated the official state agency to receive all notifications from the United States department of transportation or any other federal or state agency in regard to discontinuance of service or railroad property abandonment proceedings, including notification of applications from railroad companies for any such purposes.

1-b. The department of transportation shall promptly inform in writing all interested state agencies, transportation authorities, and every county, city, town and village in which such property is located and the appropriate entity designated by the governor pursuant to title IV of the federal intergovernmental cooperation act of nineteen hundred sixty-eight and the federal office of management and budget circular A-98 of (a) the issuance of any certificate from the United States department of transportation or other federal or state agency authorizing discontinuance of railroad service or abandonment of railroad transportation property, (b) approval of discontinuance of service or a determination of abandonment of railroad transportation property pursuant to this section, and (c) the receipt of an application to release a preferential acquisition right to railroad transportation property pursuant to this section.

1-c. Whenever a property owner intends to dispose of abandoned railroad transportation property, it shall notify the department of transportation in writing of its intention. Upon receipt of such notification, the department of transportation shall have ninety days to make a determination and notify the property owner as to the applicability of the preferential right of acquisition granted under this section, except that this period may be suspended by the department upon its finding that the property owner has not submitted information sufficient to enable the department to make its determination. If suspended, this period will resume upon receipt of this required information. In the event the department fails to notify the property owner of its determination, the preferential right of acquisition shall be deemed not to apply. The department shall inform the appropriate state agencies, every metropolitan or regional transportation authority and every county, city, town and village in which such railroad property or portion thereof is located, of the intention of the property owner and the department's finding of applicability of the preferential right of acquisition. If notified by the department that the preferential right of acquisition does not extend to the subject property, or the department has not notified the property owner of its determination prior to the expiration of the foregoing ninety day period, notwithstanding any suspension, the property owner shall not enter into a binding contract to sell the property within forty-five days after this notification by the department. Such state agencies, metropolitan or regional transportation authorities, and counties, cities, towns and villages shall have preferential acquisition rights to be determined as herein provided. No state agency, metropolitan or regional transportation authority, county, city, town, or village shall have any preferential right of acquisition unless specifically authorized in writing by the department. Within a reasonable time thereafter, any agency of government which intends to exercise a preferential acquisition right for such property shall notify the department of transportation in writing. Within a reasonable time, not greater than one hundred twenty days after receipt of such notification by the property owner, the department of transportation shall notify the property owner in writing whether the department of transportation intends to exercise its preferential acquisition right under this section or, if not, whether it has determined that any other agency of government has been authorized by it to exercise a preferential acquisition right to such property. If the department of transportation notifies the property owner that it does not intend to exercise its right and that it has not authorized any other state or local agency of government to so exercise its right, the commissioner shall issue the property owner a written release of the preferential acquisition rights granted under this section. In the event the department fails to provide notice of the intent to release the preferential right of acquisition, such right shall be deemed to have expired. If the department of transportation, or any other state or local agency of government shall be qualified to exercise such preferential acquisition right, the department of transportation shall notify the property owner of such intention and the property owner shall not dispose of such abandoned railroad transportation property without first having obtained a release of the preferential right from the department of transportation. There shall be good faith bargaining between the property owner and the department or any party of interest either authorized by the department to exercise the preferential right of acquisition or notified by the department as to the inapplicability of the preferential right of acquisition. The department of transportation shall issue a written release of the preferential acquisition right within one hundred eighty days after demand by the property owner, or such right will be deemed to have been expired. The department shall make a good faith effort to issue such release.

1-d. Whenever a conflict occurs between one or more agencies of government as to the exercise of a preferential right, the department of transportation shall in the exercise of its sole discretion resolve such conflict and make a prompt determination of the reasonable and proper order of priority with respect to the same. In making such determination, the department shall take into consideration the provisions of the comprehensive state-wide master transportation plan and its actions shall be consistent to the extent practicable with the effectuation of all state plans, policies and objectives.

1-e. The commissioner of transportation shall promulgate rules and regulations consistent with and for the purpose of adequately implementing the foregoing subdivisions.

2. For the purposes of this section, property shall be deemed to be abandoned for railroad transportation purposes (a) when, where required by law, a certificate of abandonment of the railroad line situate thereon has been issued by the United States department of transportation and/or any other federal or state agency having jurisdiction thereof; or (b) when such a certificate of abandonment is not so required and the use of such property for railroad transportation purposes has been discontinued with the intent not to resume. Intent not to resume may be inferred from circumstances. Non-use of the property for railroad transportation purposes for two consecutive years shall create a presumption of abandonment. When use of such property for railroad transportation purposes has been discontinued and upon request of the property owner or his own motion, the commissioner shall undertake an investigation thereof, which may include consultation with the United States department of transportation, and shall render a determination as to whether or not (a) the property owner has definite plans for the use of such property for purposes ordinarily associated with the safe and normal operation of a railroad or associated transportation purposes; (b) such property continues to be suitable for such railroad transportation purposes; and (c) such property is

necessary, either presently or in the future, for such railroad transportation purposes. Such property shall be deemed to be abandoned for railroad transportation purposes if the commissioner shall determine that (a) the property owner has no definite plans for the use of such property for purposes ordinarily associated with the safe and normal operation of a railroad or associated transportation purposes; or (b) such property is no longer suitable for such railroad transportation purposes; and (c) such property is not necessary, either presently or in the future, for such railroad transportation purposes. The commissioner shall render such determination within ninety days after the commencement of such investigation and such determination shall be conclusive except that if the property is determined not to be so abandoned such determination shall not preclude the undertaking of a subsequent investigation concerning the same property. Sales of abandoned railroad transportation property for continued or resumed rail transportation use may be exempted at the commissioner's discretion from the preferential right of acquisition. This section shall not apply to the subsequent resale of property lawfully acquired subject to the provisions of this section as then applicable, except when the subsequent sale involves property previously exempted from this section by the commissioner.

3. The expense of the acquisition of property including the cost of making surveys and preparing descriptions and maps of property to be acquired, and of administrative duties in connection therewith, serving notice of appropriation, publication, making title searches, appraisals and agreements, and examinations and readings and approval of titles made by the attorney-general, expenses incurred by the commissioner or the attorney-general in proceedings for removal of owners or occupants, and expenses incurred by the commissioner in connection with the management and supervision of the property, shall together be deemed to constitute the cost of property acquired pursuant to this section. The comptroller is hereby authorized to charge against the moneys appropriated for highway or other transportation purposes and to reserve therefrom such sums as may be sufficient to defray the necessary expenses to be incurred by the attorney general for examination, readings and approval of titles, upon the filing with him by the

attorney general from time to time of a certificate or certificates approved by the commissioner setting forth such estimated expenses. Such expenses shall be paid from the funds so reserved after audit by the state comptroller.

4. Any moneys received by the commissioner from rentals or other sources of revenue in connection with the management, operations, occupancy, use or the sale of or exchange of property, under this section, that has been acquired by the commissioner pursuant to this section shall be deposited in the treasury of the state to the credit of the capital construction fund.

5. The commissioner may determine whether any property acquired pursuant to this section may be, in whole or in part, sold or exchanged on terms beneficial to the state, and in all cases of such determination, he may, notwithstanding the provisions of any general, special or local law, so dispose of such property. In order to carry any such sale or exchange into effect, the commissioner of transportation is hereby authorized to execute and deliver, in the name of the people of the state, a quitclaim of, or a grant in and to, such property. Each such instrument of conveyance shall be prepared by the attorney general and before delivery thereof, shall be approved by him as to form and manner of execution.

6. The term "property" as used in this section means all abandoned railroad property, except:

(a) property noncontiguous to line rights of way and yards, except when such property has been made noncontiguous as a result of a previous sale or release of the preferential right, and

(b) side and spur track properties not greater than one-fourth mile in length, except when sales of such property would make adjoining rights of way noncontiguous.

7. The commissioner, when he deems it necessary, may in the manner provided by subdivision twelve of section thirty of the highway law, obtain possession of any property acquired pursuant to this section.

8. The commissioner, in the manner provided by subdivision thirteen-c of section thirty of the highway law, shall manage and receive fair and reasonable value for the holding, use or occupancy of property acquired pursuant to this section.

9. The provisions of this section shall not apply to a railroad company owned and operated by a municipal corporation.

***§ 18-a. Statewide mass transportation operating assistance program.** 1. Within the amounts made available therefor by appropriation, a statewide mass transportation operating assistance program is hereby established for the purpose of making payments toward the operating expenses of public transportation systems. For the purposes of this section, the term public transportation system shall mean any public benefit corporation constituting a transportation authority which provides or contracts for the provision of (under joint support arrangements) mass transportation services, or a subsidiary thereof, or any county or city which provides or contracts for the provision of (pursuant to section one hundred nineteen-r of the general municipal law) mass transportation services.

2. a. On and after May first, nineteen hundred seventy-four, the commissioner shall pay to each public transportation system that makes an application therefor, in quarterly installments, a mass transportation operating assistance service payment to be determined and computed as follows: the chief executive officer of each such system shall certify to the commissioner not more than thirty days nor less than fifteen days prior to the date of commencement of any quarter for which an installment is payable, the total number of passengers such system estimates that it will carry and the total number of vehicle or car miles such system estimates that its equipment will travel in revenue service during the quarter for which such installment is to be paid. Upon receipt of any such certification, the commissioner shall provide to the public transportation system a service payment, which payment shall be computed by adding the sum of (i) the certified number of passengers multiplied by one and four-tenths cents per passenger,

(ii) the certified number of vehicle or car miles multiplied by nine cents per vehicle or car mile, and (iii) the amount obtained by multiplying the total number of persons within the urban area served by the public transportation system, as determined by the most current federal decennial census, by ten cents per capita; provided, however, that any service payment made by the commissioner to any county or city on account of such county's or city's contracts for mass transportation services (pursuant to section one hundred nineteen-r of the general municipal law), shall not include an amount computed under item (iii) above. Such quarterly installments shall be payable not later than the tenth day of each successive quarter, with the quarters commencing on the first day of May, August, November and February, respectively; provided, however, that for the first quarter of May first through July thirty-first, nineteen hundred seventy-four, such quarterly installment may be made on or before June fifteenth, nineteen hundred seventy-four and the chief executive officer of any public transportation system making application hereunder shall make the required certifications not more than thirty nor less than fifteen days prior to such date.

b. Each public transportation system receiving a quarterly service payment pursuant to this subdivision shall certify to the commissioner, within five days of the end of each quarter for which a service payment was received, the actual total number of passengers carried by the system during such quarter and the actual total vehicle or car miles the system's equipment traveled in revenue service during such quarter, and based upon such actual totals, the commissioner shall make such adjustments as may be appropriate in the amount of the service payment for such system for the succeeding quarter.

3. Notwithstanding the provisions of subdivision two of this section, the commissioner may establish with respect to any public transportation system a maximum service payment, limiting the amount of state assistance for which such system may qualify, where it appears that the total amount of money appropriated or allocated to a group of unspecified public transportation systems is less than the total amount of money for which the entire group is eligible. Such maximum service payments may be established on a quarterly or annual basis, in the

discretion of the commissioner; provided, however, that the sum of all of the maximum service payments established during the period covered by the appropriation, shall equal the amount of the appropriation or allocation.

4. a. For any quarter commencing on or after May first, nineteen hundred seventy-four, any county or city served by a public transportation system that receives a service payment pursuant to subdivision two of this section shall, not later than the fifteenth day following the commencement of the quarter for which the payment is made or the date on which the payment is made, whichever is later, pay to the public transportation system a sum equal to such service payment, except that in the case of a service payment made to a public transportation system on account of mass transportation services provided to more than one county (considering the city of New York to be one county), each county receiving such services from such system shall pay to the system a sum equal to its share of the service payment, which sum shall be determined in accordance with the percentage or dollar amounts established for such county by the legislature.

b. The payment required of any county or city by paragraph a of this subdivision shall be in addition to all other forms of assistance now provided or scheduled to be provided to any public transportation system by any county or city, whether directly or indirectly; provided, however, that where any county or city pays all of the operating deficit of a public transportation system within such county or city, the amount of assistance provided by such county or city to such public transportation system may be reduced to the extent of the service payment, but in no event to an amount less than the service payment.

c. In the event that a county or city shall fail to make to a public transportation system any of the payments required to be made by it under this subdivision, the chief executive officer of the public transportation system or such other person as the commissioner shall designate shall certify to the state comptroller such amount due and owing such public transportation system and the state comptroller shall withhold an equivalent amount from state aid allocated to such county or city from highway aid, the motor fuel tax and the motor vehicle registration fee distributed pursuant to section one hundred twelve of the highway law, or per capita local assistance pursuant to section fifty-four of the state finance law subject to the following limitations: prior to withholding amounts allocated to carry such county or city, the comptroller shall pay in full any amount due the state of New York municipal bond bank agency, on account of any such county's or city's obligation to such agency; the city university construction fund, pursuant to the provisions of the city university construction fund act; the New York city housing development corporation, pursuant to the provisions of the New York city housing development corporation act (article twelve of the private housing finance law); and the transit construction fund, pursuant to the provisions of article two, title nine of the public authorities law. The comptroller shall give the director of the budget notification of any such payment. Such amount or amounts so withheld by the state comptroller shall be paid to such public transportation system, which system shall use such amount or amounts for the payment of the county or city share of its operating expenses as determined by the legislature or by the formula or formulae developed by the commissioner. When such amount or amounts are received by such public transportation system, it shall credit such amounts against any amounts due and owing such system by the county or city on whose account such amount was withheld and paid.

5. Any federal financial assistance granted for the specific purpose of paying the operating expenses of any county, city or public benefit corporation eligible to receive service payments as a public transportation system pursuant to this section, received by the state or any municipality after the effective date of this section, and made available to any such county, city or public benefit corporation for application in accordance with the terms of the grant, shall be combined with any similar federal grant made directly to the county, city or public benefit corporation to help meet the operating expenses of any mass transportation services provided for by any such county, city or public benefit corporation whether directly or by contract. In the event that the total revenues of any public transportation system, including subsidies from federal, state or local governments, exceed the total

operating expenses for any such system, excluding depreciation, such excess shall be utilized by the system to reduce fares or to extend or increase mass transportation services. A plan to effectuate any such fare reduction or extension or increase in services shall be submitted to the commissioner by a public transportation system within thirty days of receiving notice from the commissioner to prepare and submit such a plan. Upon approval by the commissioner, such plan with any modifications made by the commissioner shall be implemented as soon as practical. Upon the failure of a public transportation system to submit a plan in the manner provided by this subdivision, the surplus shall be utilized by such system to reduce the proportionate shares of the state and the county or city required to make matching payments to the system, or in the event that no future payments are to be made to such public transportation system, the system shall proportionately refund such surplus to the state and the county or city involved.

6. The commissioner may prescribe such regulations as he may deem appropriate to effectuate the purposes of this section, including, but not limited to, a uniform system of accounting for the purposes of reporting pursuant to the provisions of this section. The commissioner shall also define by rules and regulations, the terms "passenger", "vehicle or car mile", "the urban area served by any such public transportation system", "passenger-mile", "chief executive officer", "mass transportation services", and "service payment", and such other terms as he deems necessary to carry out the statewide operating assistance program.

7. The commissioner shall have the power to audit and examine the accounts, books, contracts, records, documents and papers of any participating public transportation system in order to effectuate the purposes and intent of this section.

8. The commissioner is hereby authorized to enter into contracts or otherwise cooperate with the federal government or any agency or instrumentality thereof for the purposes set forth in this section. Such authorization shall include the power to apply for, receive, distribute or expend federal money available or which may hereafter become

available for such purposes. The distribution of federal monies shall be in accordance with the requirements of the federal grant, except that in the absence of any required distribution the commissioner shall distribute such federal monies in a manner designed to have the maximum effect on fare stabilization throughout the state.

* NB Expired May 1, 1975

§ 18-b. Statewide mass transportation operating assistance program. 1. Within the amounts made available therefor by appropriation, a statewide mass transportation operating assistance program is hereby established for the purpose of making payments toward the operating expenses of public transportation systems. For the purposes of this section, the term public transportation system shall mean any public benefit corportion constituting a transportation authority which provides or contracts for the provision of (under joint support arrangements) mass transportation services, or a subsidiary thereof, or any Indian tribe which provides or any county or city which provides or contracts for the provision of (pursuant to section one hundred nineteen-r of the general municipal law) mass transportation services or any person, firm or corporation performing intercity bus passenger service as defined in subdivision three of section fourteen-g of this article serving two or more counties within the state which is under contract with the commissioner pursuant to such section fourteen-g to provide mass transportation services.

2. a. The commissioner shall pay to each public transportation system that makes an application therefor, in quarterly installments, a mass transportation operating assistance service payment. For the purposes of this section, the quarters shall be April through June, July through September, October through December and January through March.

b. For the quarter commencing April first, nineteen hundred seventy-five the quarterly service payment shall be the amount computed by the formula set forth in subsection three of this section.

3. The quarterly service payment made to any public transportation

system shall not be greater than a sum computed in one of the following manners:

(i) In the case of commuter rail, by adding the certified number of commuter rail passengers multiplied by two cents per passenger and the certified number of commuter rail vehicle or car miles multiplied by twenty-five cents per vehicle or car mile.

(ii) In the case of subway or rapid transit, by adding the certified number of subway or rapid transit passengers multiplied by two cents per passenger and the certified numbers of subway or rapid transit vehicle or car miles multiplied by eight cents per vehicle or car mile.

(iii) In the case of bus lines, by adding the certified number of bus passengers multiplied by two cents per passenger and the certified number of bus miles multiplied by seven cents per bus mile. For the purposes of computing quarterly service payments only mileage accumulated in revenue service shall be used.

Whenever it is determined by the commissioner that the amount of money appropriated for service payments is less than the total amount of money for which all public transportation systems are eligible, the commissioner may establish on a quarterly or annual basis, a maximum service payment limit which is lower than that provided for in this section.

(iv) In the case of commuter ferry lines with the authorization for payment thereof for the fiscal year nineteen hundred seventy-five--nineteen hundred seventy-six to be in the discretion of the commissioner, by adding the certified number of annual ferry passengers multiplied by two cents per passenger, times the certified number of annual nautical ferry miles, times two-one hundred thousandths. For the purposes of computing quarterly service payments only mileage accumulated in revenue service shall be used.

4. a. All service payments shall be made upon an application of the public transportation system. Such application shall be filed between the second and the seventeenth day of the first month of each quarter. Upon application, the chief executive officer of each public transportation system shall certify to the commissioner, the total number of passengers such system estimates that it will carry and the

total number of vehicle or car miles such system estimates that its equipment will travel in revenue service during the quarter for which such installment is to be paid.

Upon receipt and approval of such application and certifications the commissioner shall, by the tenth day of the next succeeding month, pay to the public transportation operator, the quarterly service payment.

b. The chief executive officer of each public transportation system receiving a quarterly service payment pursuant to this section shall certify to the commissioner, within fifteen days after the end of the quarter for which a service payment was received, the actual total number of passengers carried by the system during such quarter and the actual total vehicle or car miles the system's equipment traveled in revenue service during such quarter, and based upon such actual totals, the commissioner shall make such adjustments as may be appropriate in the amount of the service payment for such system for the succeeding quarter.

5. a. For each quarter, each county, municipality or Indian tribe served by a public transportation system which receives a service payment pursuant to subsection two of this section shall, not later than the twenty-fifth day of the second month of each quarter for which payment is made, pay to the public transportation system a sum equal to such service payment or its share of such service payment, except that in the case of a service payment made to a public transportation system on account of mass transportation services provided to more than one county (considering the city of New York to be one county), each county receiving such services from such system shall pay to the system a sum equal to its share of the service payment, which sum shall be determined in accordance with the percentage or dollar amounts established for such county by the legislature.

Where such county, municipality or Indian tribe is the public transportation system, sums equal to such service payment shall be committed to the use of the public transportation system, not later than the twenty-fifty day of the second month of each quarter. Such sums so committed shall not be used for other than the purposes of operating the public transportation system.

b. The payment or commitment of such sums by the counties, municipalities or Indian tribes provided for in paragraph a of this subdivision shall not be made from sums received in payment of fares by the passengers of such public transportation system or from any other revenues of such system.

c. In the event that a county or municipality shall fail to make to a public transportation system any of the payments required to be made by it under this section, the chief executive officer of the public transportation system or such other person as the commissioner shall designate shall certify to the state comptroller such amount due and owing such public transportation system and the state comptroller shall withhold an equivalent amount from state aid allocated to such county or municipality from highway aid, the motor fuel tax and the motor vehicle registration fee distributed pursuant to section one hundred twelve of the highway law, or per capita local assistance pursuant to section fifty-four of the state finance law subject to the following limitations: prior to withholding amounts allocated to carry such county or municipality, the comptroller shall pay in full any amount due the state of New York municipal bond bank agency, on account of any such county or municipality's obligation to such agency; the city university construction fund, pursuant to the provisions of the city university construction fund act; the New York city housing development corporation, pursuant to the provisions of the New York city housing development corporation act (article twelve of the private housing finance law); and the transit construction fund, pursuant to the provisions of article five, title nine-a of the public authorities law. The comptroller shall give the director of the budget notification of any such payment. Such amount or amounts so withheld by the state comptroller shall be paid to such public transportation system, which system shall use such amount or amounts for the payment of the county or municipality share of its operating expenses. When such amount or amounts are received by such public transportation system, it shall credit such amounts against any amounts due and owing such system by the county or municipality on whose account such amount was withheld and paid.

d. The commissioner may impose a penalty in an amount not exceeding twenty per centum of any overpayment to a public transportation system whenever such overpayment results from willful failure to comply with the requirements of this section, or the rules and regulations authorized by this section, or whenever a public transportation system, or an individual operator that is a part of such system, knowingly files an incomplete, incorrect or misstated report. A public transportation system or individual operator may request and the commissioner shall provide an opportunity to be heard prior to the imposition of any penalty as provided for in this section.

6. Any federal financial assistance granted for the specific purpose of paying the operating expenses of any county, municipality, public benefit corporation or Indian tribe, eligible to receive service payments as a public transportation system pursuant to this section, received by the state or any municipality or Indian tribe after the effective date of this section, and made available to any such county, municipality, public benefit corporation or Indian tribe for application in accordance with the terms of the grant, shall be combined with any similar federal grant made directly to the county, municipality, public benefit corporation or Indian tribe to help meet the operating expenses of any mass transportation services provided for by any such county, municipality, public benefit corporation or Indian tribe whether directly or by contract. In the event that the total revenues of any public transportation system, including subsidies from federal, state or local governments, and where applicable, including funds required to be committed by the county, municipality or Indian tribe, exceed the total operating expenses for any such system, excluding depreciation, such excess shall be utilized by the system to reduce fares or to extend or increase mass transportation services. A plan to effectuate any such fare reduction or extension or increase in services shall be submitted to the commissioner by a public transportation system within thirty days of receiving notice from the commissioner to prepare and submit such a plan. Upon approval by the commissioner, such plan with any

modifications made by the commissioner shall be implemented as soon as practical. Upon the failure of a public transportation system to submit a plan in the manner provided by this section, the surplus shall be utilized by such system to reduce the proportionate shares of the state and the county, municipality or Indian tribe required to make matching payments to the system, or in the event that no future payments are to be made to such public transportation system, the system shall proportionately refund such surplus to the state and the county, municipality or Indian tribe involved.

7. The commissioner may prescribe such regulations as he may deem appropriate to effectuate the purposes of this section, including but not limited to, a uniform system of reporting pursuant to the provisions of this section. The commissioner shall also define by rules and regulations, the terms "passenger", "vehicle or car mile", "urbanized area", "chief executive officer", "mass transportation services", "service payment", "commuter rail system", "subway system", "rapid transit system", "bus system", "peak hours", "elderly", "handicapped", and such other terms as he deems necessary for the purposes of this section.

The commissioner, in conformance with the auditing procedures of the state comptroller, shall have the power to audit and examine the accounts, books, contracts, records, documents and papers of any participating public transportation system in order to effectuate the purposes and intent of this section. Where a county, counties, municipality, municipalities, Indian tribe or Indian tribes contract for the provision of public transportation services with a private operator, the books and records of such private operator shall also be subject to audit and examination by the commissioner.

8. The commissioner is hereby authorized to enter into contracts or otherwise cooperate with the federal government or any agency or instrumentality thereof for the purposes set forth in this section. Such authorization shall include the power to apply for, receive, distribute or, following appropriation authorization by the legislature, expend federal money available or which may hereafter become available for such

purposes. The distribution of federal monies shall be in accordance with the requirements of the federal grant, except that in the absence of any required distribution the commissioner shall distribute such federal monies in a manner which gives due consideration to the relative needs of public transportation system operators throughout the state.

9. The commissioner shall prepare and submit to the governor and the legislature on or before November fifteenth of each year, a report, which may include, but not be limited to, findings and recommendations on the following: (a) the impact and effectiveness of the statewide operating assistance program; (b) the current and projected operating costs, revenues and subsidies of major transit systems or groups of systems; (c) the efficiency, effectiveness, quality and the availability of transit service; (d) the status of transit system long-range planning and development and use of service and performance guidelines to evaluate the efficiency, effectiveness and quality of service; and (e) issues related to and/or affecting the administration of the statewide operating assistance program.

* 10. Any street surface railroad in a city having a population of one million or more commencing operation after July first, nineteen hundred ninety-three shall not be eligible to receive statewide mass transportation operating assistance.

* NB There are 2 sb 10's

* 10. Any commuter ferry line commencing operation after July first, nineteen hundred ninety-three shall not be eligible to receive statewide mass transportation operating assistance.

* NB There are 2 sb 10's

11. To ensure that major private bus operations, as defined by the commissioner, do not make excess profits, the commissioner shall limit operating assistance provided pursuant to this section to an amount which will not provide more than a reasonable return based on equity or operating revenue and expenses as defined by program rules and regulations. Further, the commissioner may exempt the following from the provisions of this subdivision:

a. operations of private carriers that are conducted pursuant to contracts with New York state;

b. operations of private carriers that are conducted pursuant to competitively procured contracts awarded by municipalities; and

c. complementary para-transit operations that are provided as mandated by the federal Americans with Disabilities Act.

12. To ensure that mass transportation operating assistance is not used to support duplicative and redundant service, the commissioner may limit or withhold statewide mass transportation operating assistance from any public transportation system for such services the commissioner determines to be duplicative or redundant. Prior to determining that a service is or would be duplicative or redundant, the commissioner shall consult with the provider of such service or the applicant proposing to provide such service and with any authority, Indian tribe, county or city which is contracting for such service or proposing to contract for such service.

§ 19. Interstate high speed intercity rail passenger network compact. The interstate high speed intercity rail passenger network compact is hereby ratified, enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

INTERSTATE HIGH SPEED INTERCITY
RAIL PASSENGER NETWORK COMPACT

ARTICLE I

POLICY AND PURPOSE

Because the beneficial service of and profitability of a high speed intercity rail passenger system would be enhanced by establishing such a system which would operate across state lines, it is the policy of the states party to this compact to cooperate and share jointly the administrative and financial responsibilities of preparing a feasibility study concerning the operation of such a system connecting major cities in Ohio, Indiana, Michigan, New York, Pennsylvania, Illinois, West Virginia and Kentucky.

ARTICLE II
COOPERATION

The states of Ohio, Indiana, Michigan, New York, Pennsylvania, Illinois, West Virginia and Kentucky, hereinafter referred to as participating states, agree to, upon adoption of this compact by the respective states, jointly conduct and participate in a high speed intercity rail passenger feasibility study by providing such information and data as is available and may be requested by a participating state or any consulting firms representing a participating state or the compact. It is mutually understood by the participating states that such information shall not include matters not of public record or of a nature considered to be privileged and confidential unless the state providing such information agrees to waive the confidentiality.

The participating states further agree to: 1. make available to each other and to any consulting firm representing the member states or the compact such assistance as may be legal, proper and available, including but not limited to personnel, equipment, office space, machinery, computers, engineering and technical advice and services; and

2. provide such financial assistance for the implementation of the feasibility study as may be legal, proper and available.

ARTICLE III
INTERSTATE RAIL PASSENGER ADVISORY COUNCIL

There is hereby created an interstate rail passenger advisory council, the membership of which shall consist of two representatives from each participating state, one representative from each state shall hold a bachelor of science degree in either engineering or transportation science, and shall be appointed by the governor of the participating state and the other shall be the chairman of the state's railroad authority, but in the event said state does not have a railroad authority, the second member shall be the director of the participating state's transportation agency. The members shall select designees who shall serve in the absence of the members. The advisory council shall meet within thirty days after ratification of this agreement by at least two participating states and establish rules for the conduct of the advisory council's business.

The advisory council shall coordinate all aspects of the highspeed intercity rail passenger feasibility study relative to interstate connections and shall do all other things necessary and proper for the completion of the feasibility study.

ARTICLE IV

EFFECTIVE DATE

This compact shall become effective upon the adoption of the compact into law by two or more of the participating states. Thereafter, it shall enter into force and effect as to any other participating state upon the enactment thereof by such state. This compact shall continue in force with respect to a participating state and remain binding upon such state until six months after such state has given notice to each other participating state of the repeal thereof. Such withdrawal shall not be construed to relieve any participating state from any obligation incurred prior to the end of the state's participation in the compact as provided herein.

ARTICLE V

CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any participating state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

§ 20. Nighttime work on major capital construction projects on highways, expressways and parkways. 1. On every major limited access highway, expressway and parkway capital construction project to be initiated by the department in regions ten and eleven on and after April first, nineteen hundred ninety-six, with a cost of more than two million dollars in region ten, and with a cost of more than five million dollars in region eleven the department shall, consider, and where feasible in the department's judgment, insure that such construction work is performed, no earlier than eight p.m. nor later than six a.m. For the purposes of determining whether to utilize nighttime construction, the department should review the following: existing traffic volumes, congestion, traffic control measures and motorist safety; project cost, project quality, inspection obligations, highway user costs, workforce availability and materials availability; workzone lighting and worker safety; and other factors the department deems necessary in the consideration of nighttime construction. The department may consider any recommendations and/or comments submitted from regional planning organizations, citizens advisory councils or metropolitan planning organizations regarding nighttime construction. The department shall prepare a written report of its analysis of each such project setting forth such decisions and the reasons therefor, and such report shall be available to the public.

2. Beginning on January thirty-first, nineteen hundred ninety-seven and every two years thereafter, the department shall submit a report on the status of nighttime construction projects in the state to the governor, the temporary president of the senate and the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly. Such report shall include but not be limited to: a description of each project in which nighttime construction was authorized; the success or failure in the department's opinion of the department's efforts to reduce traffic congestion using nighttime construction; a general comparison of project quality and overall costs against similar daytime construction projects; and the safety record for nighttime construction projects.

§ 21. Single audit program. 1. Municipalities and public authorities that are required in any fiscal year to have a federal single audit performed under paragraph (a) of part 200.501 of title 2 of the code of federal regulations as amended from time to time, and that expend in excess of the dollar amount provided in 2 CFR 200.501(a) as amended from time to time in any fiscal year from funds provided through state transportation programs, projects, grants, contracts or agreements administered by the department, shall prepare a "schedule of state transportation assistance expended" and cause such schedule to be audited by an independent certified public accountant for each period corresponding to the federal single audit. The audit shall conform with government auditing standards and shall include a professional audit opinion on:

(a) the "schedule of state transportation assistance expended";

(b) compliance with applicable state laws, rules, regulations and contract provisions in the administration of state transportation funded programs, projects, contracts and grants administered by the department; and

(c) the adequacy of internal controls in administering such funds in conformance with state laws, rules, regulations and contract provisions.

2. For the purposes of this section, the term "fiscal year" shall mean the regular annual accounting period of the municipality or public authority; and the term "government auditing standards" shall mean those standards prescribed by the comptroller general of the United States.

3. The commissioner shall promulgate rules and regulations for the implementation of this section. Such rules and regulations shall include, but shall not be limited to, audit compliance requirements for specified programs administered by the department, audit report submission requirements, the acceptance criteria for audit reports, and any information needed by the commissioner to complete the reports required by subdivision six of this section. Audit reports under this section shall be due for each fiscal year beginning after December thirty-first, two thousand.

4. Additional expenses incurred by a municipality or public authority

in connection with audits performed under this section may be chargeable as an indirect cost to the state program, project, grant, contract or agreement where otherwise allowable and to the extent funds are provided for such purposes.

5. The commissioner, insofar as the commissioner deems practicable, shall not impose any additional audit requirements in the department's administration of state transportation programs, projects, grants, contracts and agreements upon municipalities and public authorities which provide both the federal single audit and the state audit in accordance with subdivision one of this section. This section shall not supersede the authority of the state comptroller to conduct audits.

6. The commissioner shall annually report to the governor, the temporary president of the senate and the speaker of the assembly on the benefits and costs of the implementation of this section by the thirty-first of October, beginning in the year two thousand nineteen.

§ 22. Work zone safety and enforcement. The department shall, in cooperation with the superintendent of state police, the commissioner of motor vehicles, the chairman of the New York state thruway authority, local law enforcement agencies and representatives for contractors and laborers, develop and implement rules and regulations for the increased safety of work zones. Such rules and regulations shall include, but shall not be limited to, a police presence at all major active work zones as defined by rules and regulations set forth by the commissioner, the use of radar speed display signs at all major active work zones as defined by rules and regulations set forth by the commissioner, and a system for reviewing work zone safety and design for all work zones under the jurisdiction of the department.

ARTICLE 2-A
THE INTERSTATE BRIDGE COMMISSION

§ 25. Interstate bridge commission. The commissioner of transportation or his duly authorized representative shall constitute the interstate bridge commission. Such commission shall, together with a similar board or commission from the commonwealth of Pennsylvania, constitute a joint commission to acquire the rights, franchises and property of the several bridge corporations, municipal corporations, companies, partnerships or individuals owning or operating toll bridges and including the bridge at Pond Eddy in the town of Lumberland, Sullivan county, owned by said town across the Delaware river between the state of New York and the commonwealth of Pennsylvania, except such as are owned by steam or electric railroads or railways and used exclusively for railroad or railway purposes. Such acquisition shall be either by purchase or to be had and effected by this state and the commonwealth of Pennsylvania under and by virtue of their respective rights of eminent domain, this state to pay one-half of the cost of the said bridges and one-half of the cost of acquiring them, and the other half of the cost of the said bridges and one-half of the cost of acquiring them to be paid by the commonwealth of Pennsylvania, or in lieu thereof, in proportion between the commonwealth of Pennsylvania, and the counties and municipalities thereof as the latter state may by appropriate legislation determine.

§ 26. Expense of maintenance a joint charge; reconstruction of bridges. Upon the acquisition as aforesaid by this state jointly with the commonwealth of Pennsylvania of the bridge properties, rights and franchises, as hereinbefore provided, such bridge or bridges, except in the case of railroad or railway bridges as hereinbefore provided, shall be and remain in the charge and custody of the said joint commission, and such bridges and the immediate approaches thereto shall be maintained jointly by this state and the commonwealth of Pennsylvania in equal proportions, and shall be kept in constant repair so long as the said joint commission deems it feasible so to do, and the expense thereof and therefor shall be paid as are other expenses incident to the maintenance of property in the charge and custody of the said state; however, and notwithstanding the aforesaid provision as to the joint maintenance of the approaches to such bridges, if and when the department of highways of the commonwealth of Pennsylvania shall, with the approval of the said joint commission, maintain at its sole expense said approaches lying in Pennsylvania as a part of its state highway system or otherwise, then, and in that event, the department of transportation of New York state, with the approval of said joint commission, shall take over and maintain all of such approaches, with the exception of the approach in Port Jervis, lying in New York state, such approaches in New York state to be considered as the length of existing roads between the bridge head of the respective bridges and the nearest intersecting public road or street, and the cost of such maintenance by said department of transportation shall be payable from any moneys available for the maintenance of state highways; provided that appropriate concurrent legislation for the same purpose be enacted by the commonwealth of Pennsylvania.

If in the discretion of said joint commission it shall be deemed infeasible to continue the repairing of any such bridge and the said joint commission shall therefore determine to discontinue the public use thereof then the interstate bridge commission may enter into an agreement with the department of highways of the commonwealth of Pennsylvania for the removal of such bridge and the expense of such removal shall be paid one-half by this state and one-half by the commonwealth of Pennsylvania.

The said interstate bridge commission is hereby empowered and authorized to enter into an agreement or agreements with the department of highways of the commonwealth of Pennsylvania for the reconstruction of the existing free bridges across the Delaware river between the commonwealth of Pennsylvania and the state of New York at or near the present location of such bridges as may be fixed and determined in an agreement or agreements entered into pursuant to the provisions hereof.

Said agreement or agreements shall provide for the making and preparation of the necessary surveys, plans and specifications by the state of New York and the commonwealth of Pennsylvania, either jointly or by either, in such manner as may be agreed upon; and the letting of the contract and the supervision and inspection of the work may be handled in the same manner; provided, however, that said agreement or agreements shall make an equal division of the expense involved between the state of New York and the commonwealth of Pennsylvania, and provided further that each said state shall secure at its own cost and expense the necessary right of way within its respective limits required for the reconstruction of said bridges and approaches thereto, and each state shall bear the cost of said approaches within its respective limits.

In carrying out the terms of any agreement or agreements entered into pursuant to the provisions of this act for the reconstruction or maintenance of any bridge or bridges, as well as in connection with the reconstruction or maintenance of the necessary approaches in New York state, the said interstate bridge commission, acting by and through the commissioner of transportation shall have and exercise all the same rights and powers as are vested by law in the commissioner of transportation relating to the construction of state highways and bridges thereon.

The portion of the cost and expense to the state of New York for its share of the engineering and the reconstruction of said bridge or bridges, as well as the approaches thereto within said state, shall be payable from any moneys available for the construction or reconstruction of state highways and bridges thereon to be paid out of the state treasury on the audit and warrant of the state comptroller on the certificate of the commissioner of transportation countersigned by the interstate bridge commission of this state.

Upon the completion of any such bridge or bridges they shall be free from toll and shall be in the charge and custody of the said joint commission, and such bridge or bridges and the immediate approaches thereto shall be maintained jointly by this state and the commonwealth of Pennsylvania in the same way as other bridges across the Delaware river under the charge and custody of the joint commission.

The share of New York state of the cost and expense of such maintenance and repair shall be payable from any moneys of the state available for the maintenance and repair of state highways and bridges thereon upon vouchers audited by the interstate bridge commission; provided that appropriate concurrent legislation for the same purpose be enacted by the commonwealth of Pennsylvania.

§ 27. Power to sell and lease property; disposition of proceeds. Provided that concurrent legislation for the same purpose be enacted by the commonwealth of Pennsylvania, the said joint commission be and is hereby authorized and empowered as follows:

(a) To sell and dispose of such real and personal property in either Pennsylvania or New York as is, in its judgment, not necessary for the proper care, maintenance and operation of such bridges as are, or may hereafter come, under its control and jurisdiction for such price or prices and under such conditions as such commission may deem proper and reasonable.

(b) To lease real estate owned by it, and which, in its judgment, is not necessary for the maintenance and operation of the bridges under its control and jurisdiction, and to grant licenses to public utility companies for the occupation of parts of bridges and other real estate now or hereafter under the control and jurisdiction of said commission, upon such terms and conditions, and for such rentals and fees, as are, in the opinion of the commission, proper and reasonable.

(c) To pay all moneys paid to it, in accordance with the provisions of this section, as follows: one-half thereof shall be paid unto the state of New York, and the remaining half thereof shall be paid unto the commonwealth of Pennsylvania, such payment to the state of New York to be deposited in the state treasury to the credit of the general fund; provided, however, that whenever the real or personal property, which the commission may desire to sell, has been acquired or secured at the sole cost and expense of the commonwealth of Pennsylvania or the state of New York, the entire net proceeds of such sale shall be paid to the state which has borne the cost of acquisition of such property.

ARTICLE 2-B

URBAN TRANSPORTATION

§ 30. Urban transportation planning. Notwithstanding section seven hundred thirty-four of the executive law or any other law, the commissioner shall have power to sponsor, conduct and undertake urban transportation studies and to act as the state planning agency for metropolitan or regional urban transportation planning and for state and interstate comprehensive urban transportation planning and for research and coordination activity related thereto in connection with the provisions of and for the purposes set forth in section seven hundred one of the federal housing act of nineteen hundred fifty-four, as amended, when such studies and activity relate primarily to the development of a transportation plan. In exercising his powers under this section the commissioner may act jointly with and otherwise cooperate with any state office or agency, and in order to carry out the purposes of this section the commissioner may enter into contracts or agreements with any person, firm, corporation or governmental agency. The commissioner may act as agent for or enter into contracts and otherwise cooperate with the federal government in connection with the provisions of section seven hundred one of the housing act of nineteen hundred fifty-four, as amended, to the extent that such section relates to assistance of urban transportation planning, and as such agent administer any grant or grants for the assistance of urban transportation planning to the state or through the state to its local governing bodies and to regional and metropolitan planning agencies, complying with the provisions of such grants or advances. The department of taxation and finance is hereby designated to accept and receive all grants or advances from the federal government for the purpose of this section. All monies so accepted and received shall be deposited by the department of taxation and finance in a special fund for use exclusively for the purposes for which such grants or advances were made. Payment from the said fund shall be made upon audit and warrant of the comptroller upon vouchers approved by the commissioner. The commissioner is hereby authorized to present any claim to the federal government or any agency or official thereof with respect to the funds made available for the purposes of this section pursuant to section seven hundred one of the housing act of nineteen hundred fifty-four, as amended.

§ 31. Mass transportation demonstration projects. The commissioner shall have power to sponsor, conduct and undertake mass transportation demonstration projects which will assist in carrying out urban transportation plans and research, including but not limited to the development of data and information of general applicability on the reduction of urban transportation needs, the improvement of mass transportation service, and the contribution of such service toward meeting total urban transportation needs at minimum cost, and in connection therewith to enter into contracts and otherwise cooperate with the federal government pursuant to section one hundred three (b) of the housing act of nineteen hundred forty-nine, as amended or section six of the urban mass transportation act of nineteen hundred sixty-four, as amended. For the purposes of this section the commissioner may enter into contracts or agreements with any person, firm, corporation or governmental agency.

Any real property which the commissioner deems necessary for the purposes of this section may be acquired and disposed of by him in the name of the people of the state of New York according to the procedure provided in the highway law for the acquisition and disposition of property for state highway purposes. The provisions of the highway law shall also control the meaning of property as used herein, the manner in which possession of such property may be obtained and the circumstances under the procedure by which it may be sold or exchanged. Adjusted claims for such acquisition and awards and judgments of the court of claims made in respect thereto shall be paid out of the state treasury from moneys available for the purposes of this section. The construction of improvements by the commissioner in connection with a demonstration project, and the design of such improvements, shall be carried on, generally, in the same manner and subject to the same provisions of law as apply to the design and construction of state highways. The department of taxation and finance is hereby designated to accept and receive all grants or advances from the federal government for the purposes of this section. All monies so accepted and received shall be deposited by the department of taxation and finance in a special fund for use exclusively for the purposes for which such grants or advances were made. Payment from the said fund shall be made upon audit and warrant of the comptroller upon vouchers approved by the commissioner. The commissioner is hereby authorized to present any claim to the federal government or any agency or official thereof with respect to the funds made available pursuant to section one hundred three (b) of the housing act of nineteen hundred forty-nine, as amended or section six of the urban mass transportation act of nineteen hundred sixty-four, as amended.

§ 31-a. Purchase through the state division of standards and purchase in the office of general services by certain not-for-profit corporations. A corporation, incorporated under the not-for-profit corporation law of the state of New York and approved by the federal government as a recipient of federal funds for the acquisition of equipment to provide transportation services to the elderly and/or handicapped, may make purchases, upon the written approval of the department of transportation, of special vehicles and/or radio equipment pursuant to the terms of contracts let by the state division of standards and purchase in the office of general services subject to such rules as may be established from time to time pursuant to section one hundred sixty-three of the state finance law which may establish limitations with respect to commodities and impose such other appropriate conditions upon purchasing as deemed necessary by the commissioner of general services in order to protect the state's own purchasing interests; provided that each such purchase shall have a cost of five hundred dollars or more and that said corporation shall accept sole responsibility for any payment of such cost due the vendor.

ARTICLE 2-C

NIAGARA THRUWAY TOLL REMOVAL FUND

§ 32. Niagara thruway toll removal fund. 1. There is hereby created within the department of transportation the "Niagara thruway toll removal fund". The fund shall be a corporate governmental agency constituting a public benefit corporation. It shall be administered by three trustees, two of whom shall be appointed by the governor with the advice and consent of the senate and the third shall be the commissioner of transportation.

2. The two trustees of the fund first appointed by the governor shall serve their terms ending December thirty-first, in nineteen hundred sixty-eight and nineteen hundred seventy, respectively. Persons appointed for full terms as their successors shall serve for six years each commencing as of the January first next following the year in which the term of his predecessor expired. In the event of a vacancy occurring in the office of a trustee by death, resignation or otherwise, the governor shall appoint a successor in the same manner as an original appointment to serve for the balance of the unexpired term.

3. The trustees of the fund shall serve without salary, but each trustee shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of his official duties.

4. The trustees of the fund may engage in private employment, or in a

profession or business, subject to the limitations contained in sections seventy-three and seventy-four of the public officers law. The fund shall, for the purposes of such sections, be a "state agency", and the trustees thereof shall be "officers" of the agency for the purposes of said sections.

5. Notwithstanding any inconsistent provisions of law, general, special or local, no officer or employee of the state, or of any civil division thereof, shall be deemed to have forfeited or shall forfeit his office or employment by reason of accepting appointment as a trustee of the fund.

6. The governor may remove any trustee for inefficiency, neglect of duty or misconduct in office after giving him a copy of the charges against him, and an opportunity to be heard, in person or by counsel, in his defense, upon not less than ten days' notice. If any trustee shall be removed, the governor shall file with the secretary of state a complete statement of charges made against the trustee, and his findings thereon, together with a complete record of the proceedings.

7. The chairman of the fund shall be designated by the governor, shall preside over all its meetings and shall have such other duties as the trustees may direct. A vice-chairman who shall preside over all meetings of the fund in the absence of the chairman and shall have such other duties as the trustees may direct may be designated from time to time by the trustees from among the other trustees.

8. The powers of the fund shall be vested in and exercised by no less than two of the trustees then in office. The fund may delegate to one or more of its trustees, or officers, agents and employees, such powers and duties as it may deem proper, provided, however, that all contracts involving an estimated expense of ten thousand dollars or more and all lease agreements to be entered into pursuant to section thirty-four of this chapter shall be approved prior to execution by no less than two trustees of the fund.

9. Officers and employees of other state agencies may be transferred

to the fund and officers and employees of the fund may be transferred to other state agencies without examination and without loss of any civil service status or rights. No such transfer, however, may be made except with the approval of the head of the other state agency involved, the director of the budget and the chairman of the fund, and in compliance with the rules and regulations of the state civil service commission.

§ 33. Purposes of fund. The purposes of this fund shall be to provide a means for elimination of existing tolls, except bridge tolls, on the Niagara section of the Governor Thomas E. Dewey Thruway within the context of protection of the rights of the bond holders of the New York State Thruway Authority.

§ 34. General powers and duties of the fund. The fund shall have the following powers in addition to those specifically conferred elsewhere in this article:

1. To sue and be sued;

2. To have a seal and alter the same at pleasure;

3. To make and alter by-laws for its organization and internal management;

4. With the approval of the comptroller, to prescribe a system of accounts;

5. To make rules and regulations governing the exercise of its corporate powers and the fulfillment of its corporate purposes under this article, which rules and regulations shall be filed with the secretary of state in the manner provided by section one hundred two of the executive law;

6. To make and execute contracts, lease agreements, and all other instruments necessary or convenient for the exercise of its corporate

powers and the fulfillment of its corporate purposes under this article;

7. To do any and all things necessary or convenient to carry out its corporate purposes and exercise the powers given and granted to it in this article.

§ 35. Resources of fund. 1. (a) There shall be paid into the fund any and all moneys received by the state from the federal government in payment of its share, pursuant to the applicable provisions of title twenty-three, United States Code, of the cost of construction of said section as it exists on the sixth day of July, nineteen hundred sixty-six.

(b) The sum of two million five hundred thousand dollars ($2,500,000), or so much thereof as may be necessary, is hereby appropriated in the first instance out of any moneys in the state treasury in the general fund to the credit of the state purposes fund, not otherwise appropriated, to the Niagara thruway toll removal fund for the purposes of this article. No part of the appropriation hereby made shall be available until a certificate of approval of availability shall have been issued by the director of the budget and a copy of such certificate filed with the state comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee. Such certificate may be amended from time to time by the director of the budget and a copy of each such amendment shall be filed with the state comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

2. The fund shall pay over annually from moneys made available to it from any source to the New York state thruway authority an amount equal to an amount sufficient to amortize that portion of the debt service of the authority allocable to the Niagara section of said thruway authority; provided, however, an agreement shall be entered into between the fund, the commissioner of transportation, the thruway authority and the bureau of public roads of the United States department of transportation providing: for the aforesaid annual payments by the fund to the thruway authority; that the federal government make the payments

provided under paragraph (a) of subdivision one of this section; that such tolls shall be removed as of the time of the first of such payments to the thruway authority; that such tolls shall not be collected so long as such annual payments are made; and further that the thruway authority shall operate and maintain such section in the same manner as on the sixth day of July, nineteen hundred sixty-six.

§ 36. Article not affected if in part unconstitutional or ineffective. If any section, subdivision, paragraph, sentence, clause or provision of this article shall be unconstitutional or be ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective, it shall be valid or effective and no other section, subdivision, paragraph, sentence, clause or provision shall on account thereof be deemed invalid or ineffective.

§ 37. Inconsistent provisions of other acts superseded. Insofar as the provisions of this article are inconsistent with the provisions of any other act, general or special, the provisions of this article shall be controlling.

ARTICLE 2-D

UTICA TRANSIT AUTHORITY

§ 40. Definitions. Whenever used in this article, unless a different meaning clearly appears from the context:

1. "Authority" shall mean a public benefit corporation created by section forty-one of this article for the purposes specified in article five-I of the general municipal law.

2. "Government" shall include the state, municipality and the federal government, and any agency or instrumentality, corporate or otherwise, or any of them acting for and on behalf of the state, a municipality or the federal government.

3. "State" shall mean New York State.

4. "Municipality" shall mean a city, town, village or county not wholly contained within a city.

5. "Municipal corporation" shall mean a city, town, village, or county not wholly contained within a city, special transportation district, public benefit corporation or other public corporation, or two or more of the foregoing acting jointly.

6. "Real Property" shall include lands, waters, rights in lands or waters, structures, franchises and interests in land, including lands under water, riparian rights, and air rights, and any and all other things and rights usually included within the said term and includes also any and all interests in such property less than full title, such as easements, permanent or temporary, rights-of-way, uses, leases, licenses and all other incorporeal heriditaments and every estate, interest or right legal or equitable.

7. "Personal property" shall mean chattels and other tangible things of a movable or removable nature.

8. "Property" shall mean both real and personal property.

9. "Capital project" shall mean the acquisition, construction, reconstruction or improvement of any omnibus, transportation or other omnibus transportation capital facility and real property and capital equipment used in connection therewith; including the preparation of feasibility studies, plans, specifications and estimates of cost therefor.

10. "Municipal project" shall mean any omnibus transportation capital project undertaken by a municipal corporation.

11. "Federal project" shall mean a municipal project aided or financed in whole or in part by the federal government.

12. "State Project" shall mean a municipal project aided or financed in whole or in part by the state.

13. "Project" shall mean a specific work or improvement to effectuate all or any part of a plan. A project may be a federal project, a state project, a municipal project or any combination of these.

14. "Project cost" shall mean the actual cost of any municipal project, or the estimated cost of such project as determined by the commissioner of transportation, whichever is lower, plus any direct incidental costs approved by the commissioner and the state comptroller.

15. "Plan" shall mean a plan or undertaking to carry into effect any municipal project.

16. "Governing body" shall mean (1) In a county, the county legislative body; (2) in a city, the board of aldermen, a common council, commission or other body vested by its charter or other law with jurisdiction to enact ordinances or local laws, except that in a city having a population of one million or more, if there be a board of estimate, the term "governing body" shall mean such board of estimate; (3) in a town, the town board; and, (4) in a village, the board of trustees.

17. "Federal assistance" shall mean funds available, other than by loan from the federal government to the Utica transit authority, either directly or through allocation by the state, for any omnibus transportation capital project.

18. "State Assistance" shall mean funds available from the state government to any omnibus transportation capital project.

§ 41. Organization. 1. There is hereby created the Utica transit authority. The authority shall be a body corporate and politic constituting a public benefit corporation and shall be perpetual in duration and consist of at least five members. The chairman of the authority shall, before the authority becomes operative, cause to be filed in the office of the commissioner, and a duplicate in the office of the secretary of state, a certificate signed by him and setting forth: (a) the date of the passage of the special act establishing the authority; (b) the name of the authority; and (c) the names of the members and their terms, specifying which member is chairman.

2. Three members, no more than two from any political party, shall be appointed by the Mayor of the city of Utica; one for a term of two years to terminate on the thirty-first day of December, nineteen hundred and seventy-one; one for a term of three years to terminate on the thirty-first day of December, nineteen hundred and seventy-one; and one for a term of four years to terminate on the thirty-first day of December nineteen hundred and seventy-three. Two members, no more than one from any political party, shall be appointed by the common council of the city of Utica; one for a term of two years to be terminated on the thirty-first day of December nineteen hundred and seventy-one; one for a term of three years to terminate on the thirty-first day of December nineteen hundred and seventy-one. The present membership of the Utica transit commission, already so appointed under local law number six of nineteen hundred and sixty-five of the city of Utica, shall constitute the membership of the Utica transit authority for terms coinciding with the present terms of the Utica transit commission. The present chairman of the Utica transit commission shall continue to serve his current term as chairman of the Utica transit authority. The mayor of the city of Utica, the majority leader of the common council and the minority leader of the common council, as they have already been serving pursuant to said local law number six of nineteen hundred and sixty-five, shall serve as ex-officio members without voting rights of the Utica transit authority.

Other municipalities electing to participate shall by their governing body appoint one member to the Utica transit authority to serve for a term of three years and who shall have a proportional vote multiplied by five based upon the same percentage as the population of the municipality he represents bears to the population of the city of Utica, said populations to be determined by the last decennial or federal county-wide special census. Any member of the authority shall lose his voting rights for such period of time as the municipality which he represents fails to make a pro-rata contribution toward the expenses of the operation of the authority.

A member of the authority shall continue to hold office until a successor is appointed and has qualified.

3. A majority of the whole number of members of a mass transportation authority then in office shall constitute a quorum for the transaction of any business or the exercise of any power of the authority. A mass transportation authority shall have power to act by a majority of the members present at any meeting at which a quorum is in attendance.

§ 42. Scope of jurisdiction. The territorial jurisdiction of the Utica transit authority shall be coterminous with the territorial limits of the City of Utica and of the areas the Utica transit commission is now serving. The Utica transit authority may provide its services or facilities to any additional areas or areas, outside of its territorial jurisdiction, in which it is franchised, licensed, authorized or permitted to provide such services or facilities by a local legislative body or governmental regulatory agency.

§ 43. Powers and duties. 1. Except as otherwise limited by this article and by article five-I of the general municipal law, the Utica transit authority shall have the following powers and duties, in addition to the other powers granted in article five-I of the general municipal law:

(a) To investigate transportation services in the municipality or municipalities within its territorial jurisdiction and the means of improving such services;

(b) To investigate to determine if there are inadequate and/or substandard transportation services;

(c) To publish and disseminate information;

(d) To prepare or arrange for preparation of plans for carrying out and operating municipal projects;

(e) To construct, reconstruct, improve, maintain or operate, or provide for the construction, reconstruction, improvement, maintenance or operation of any municipal project;

(f) To make and execute a contract or contracts for the acquisition by purchase of all or any part of the property, plant and equipment of an existing omnibus facility actually used and useful for the convenience of the public within the Utica transit authority's jurisdiction;

(g) To request the municipality or municipalities within the Utica transit authority's jurisdiction for such municipality or municipalities to adopt appropriate local laws to authorize such municipality or municipalities to acquire through eminent domain proceedings all property which the Utica transit authority deems necessary for its purposes which the Utica transit authority is unable to acquire without the use of eminent domain proceedings and to reimburse such municipality or municipalities for all costs and expenses incident to such acquisition;

(h) To acquire, hold, clear and improve real property or any interest therein for its corporate purposes;

(i) To acquire and hold personal property for its corporate purposes;

(j) To enter upon such real property as in the judgment of the Utica transit authority may be necessary for the purpose of making surveys, soundings, borings and examinations of whatever character to accomplish any purpose authorized by this article, the Utica transit authority being liable for actual damage done;

(k) To contract for expert technical and professional services;

(l) To have jurisdiction and control of each of its projects, with the right and duty to establish and charge fares, fees, rentals, rates and other charges, and to collect revenues therefrom;

(m) To sell, exchange, transfer, assign or mortgage any property or an interest therein;

(n) In connection with any municipal project to lease or rent any of the Utica transit authority's property or facilities which the Utica transit authority deems advisable;

(o) To agree upon and contract with the municipality or municipalities within the Utica transit authority's jurisdiction for the terms and conditions of occupancy or use of any of the streets, roads, highways, avenues, parks or public places of such municipality or municipalities;

(p) To petition and appear before local legislative bodies and governmental regulatory agencies to seek authorization to provide new or additional services or facilities, or to modify or terminate existing services or facilities; including permission to provide charter service;

(q) To acquire or contract to acquire from any person, firm, corporation or government by subsidy, contribution, gift, grant, grant-in-aid, loan, bequest, devise or purchase any property or any interest therein or financial assistance to be utilized in carrying out any municipal project of the Utica transit authority;

(r) To borrow money and to issue bonds and to provide for the rights of the holders thereof;

(s) To enter into collective bargaining agreements with labor representatives duly elected or recognized by the employees of the Utica transit authority;

(t) To insure or provide for the insurance of the Utica transit authority's property or operations as required by law and also against such other risks as the Utica transit authority may deem advisable;

(u) To limit by contract the exercise of any of the Utica transit authority's powers;

(v) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to their control;

(w) To make and from time to time amend and repeal by-laws, rules and regulations not inconsistent with the provisions of this article for the management and regulation of its affairs and for the regulation of its municipal projects;

(x) To conduct examinations and investigations, hear testimony and take proof under oath at public or private hearings on any material matter, require the attendance of witnesses and the production of books and papers and issue commissions for the examination of witnesses who are out of the state, unable to attend, or excused from attendance;

(y) To authorize a committee designated by the Utica transit authority consisting of one or more members, or counsel, or any officer or employee to conduct any such investigation or examination, in which case such committee, counsel, officer or employee shall have power to administer oaths, take affidavits and issue subpoenas or commissions;

(z) To enter into agreements of cooperation with or for the rendition of service to or from a federal, state or municipal governmental agency;

(aa) To sue and be sued;

(bb) To have a seal and alter the same at pleasure;

(cc) To have perpetual succession;

(dd) To make and execute contracts and other instruments necessary or convenient to the exercise of the Utica transit authority's powers;

(ee) To conduct operations customarily considered ancillary to rendering transportation services;

(ff) To do all things necessary or convenient to carry out the Utica transit authority's powers.

(gg) 1. In order to effectuate the purposes of this article the authority may acquire, hold, own, lease, establish, construct, effectuate, operate, maintain, renovate, improve, extend or repair any of its facilities through, and cause any one or more of its powers, duties, functions or activities to be exercised or performed by, one or more wholly owned subsidiary corporations of the authority and may transfer to or from any such corporation, or between such corporations, any moneys, real property or other property or the services of any officers, employees or consultants for any of the purposes of this article. The directors or members of each such subsidiary corporation shall be the same persons holding the offices of members of the authority. Each such subsidiary corporation and any of its property, functions and activities shall have all of the privileges, immunities, tax exemptions and other exemptions of the authority and of the authority's property, functions and activities. Each such subsidiary corporation shall be subject to the restrictions and limitations to which the authority may be subject. Each such subsidiary corporation shall be subject to suit in accordance with section sixty-two of this chapter. The employees of any such subsidiary corporation, except those who are also employees of the authority, shall not be deemed employees of the authority.

2. If the authority shall determine that one or more of its subsidiary corporations should be in the form of a public benefit corporation, it

shall create each such public benefit corporation by executing and filing with the secretary of state a certificate of incorporation, which may be amended from time to time by filing, which shall set forth the name of such public benefit subsidiary corporation, its duration, the location of its principal office, and any or all of the purposes of acquiring, owning, leasing, establishing, constructing, effectuating, operating, maintaining, renovating, improving, extending or repairing one or more facilities of the authority. Each such public benefit subsidiary corporation shall be a body politic and corporate and shall have all those powers vested in the authority by the provisions of this article which the authority shall determine to include in its certificate of incorporation except the power to contract indebtedness.

3. Notwithstanding any other provision of law, the authority may elect to maintain consolidated records of account for itself and its subsidiary corporations and to report on a consolidated basis with regard to the moneys and activities of the authority and its subsidiary corporations, and the authority shall not be required to keep separate records of account for or to report separately with regard to moneys or activities of any of its subsidiary corporations or of the authority itself apart from its subsidiary corporations or with regard to transfers of property or services between the authority and its subsidiary corporations or between said subsidiary corporations.

4. Notwithstanding section one hundred thirteen of the retirement and social security law or any other general, special or local law, the authority or its subsidiary created pursuant to the provisions of this subdivision, shall continue to provide to persons in its employ who were employed by public transportation facilities heretofore acquired by the authority or who have been employed by the authority, the city of Utica or the Utica transit commission prior to and after May twentieth, nineteen hundred seventy, any retirement, disability, death or other benefits provided or required pursuant to any agreement, including an agreement with a labor union of which its employees are members, and the authority or its subsidiary created pursuant to this section, is hereby authorized to retroactively or in the future to make such contributions as may be necessary to provide such benefits pursuant to the provisions

of chapter one thousand thirty-eight of the laws of nineteen hundred seventy, and any and all payments heretofore made by the authority in compliance with the terms of any contract between the authority or its predecessors in title, and the Amalgamated Association of Street, Electric and Motor Coach Employees of America, Division 582 of Utica, New York, including the trust agreement between said Division 582 and the Oneida National Bank & Trust Company of Utica, New York, as trustee, originally dated December thirtieth, nineteen hundred fifty-seven, and subsequent amendatory agreements thereof, shall be and hereby are ratified and confirmed.

5. Whenever any state, political subdivision, municipality, commission, agency, officer, department, board, division or person is authorized and empowered for any of the purposes of this article to cooperate and enter into agreements with the authority, such state, political subdivision, municipality, commission, agency, officer, department, board, division or person shall have the same authorization and power for any of such purposes to cooperate and enter into agreements with a subsidiary corporation of the authority.

2. The Utica transit authority shall file in the office of the commissioner annual reports which shall be open to public inspection. Such reports shall include, in addition to any information which the commissioner may require, a statement with respect to each completed municipal project owned or operated by the Utica transit authority the following data:

(a) Cost breakdown of real property acquired for the project;

(b) Cost breakdown in appropriate units of facilities acquired for the project;

(c) Operating revenues;

(d) Operating expenses;

(e) Number or estimated number of persons utilizing the project facility.

§ 44. Officers and employees; compensation and expenses. 1. When the office of the first chairman of the mass transportation authority becomes vacant, the authority shall select a chairman from among its members. The Utica transit authority shall select from among its members, a vice-chairman, and it may employ a general manager, a secretary, technical experts and such other officers, agents, and employees as it may require and determine their qualifications, duties and, subject to the approval of the Board of Estimate and Apportionment fix their compensation. The Utica transit authority may call upon the chief law officer of any municipality or municipalities for such legal services as it may require and it shall reimburse the municipality for the cost of such services, or it may employ its own counsel and legal staff. This section shall not be construed to prevent the Utica transit authority from engaging by contract planning, architectural, engineering or other professional or consultant services in the execution of a project.

2. The Utica transit authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

3. A member of the Utica transit authority may be compensated at a rate to be determined by the Board of Estimate and Apportionment of the city of Utica and in addition shall be entitled to the necessary expenses including traveling expenses incurred in the discharge of his duties.

4. Every officer, agent or employee of the Utica transit authority who shall sign the receipt upon the payroll of the authority as having received the amount therein mentioned in full payment for services rendered by him for the entire time specified in such payroll, or, in the event no payroll receipt is required by the authority, shall endorse a check in the amount shown upon such payroll and receive payment thereof, shall be deemed to have made an accord and satisfaction of all claims against the authority for wages, salary or other compensation due to such person from the authority for the period covered by such payroll, unless at the time of signing such payroll or endorsing such check the person receiving such wages or salary shall write legibly on the payroll in connection with his receipt or on such check in connection with his endorsement that the amount received is received

under protest, and unless such protest is so written upon such payroll or check, no recovery shall be had against the authority upon any further claim for wages, salaries or other compensation for the period of time covered by such payroll.

§ 45. Vacancies and removals. A vacancy occurring other then by reason of the expiration of the term of a member of the Utica transit authority shall be filled for the unexpired term. The governing body of the municipality or when two or more municipalities are acting jointly, the governing bodies thereof jointly may remove a member of the Utica transit authority for inefficiency, neglect of duty, or misconduct in office but only after the member shall have been given a copy of the charges against him and an opportunity to be heard in person or by counsel in his own defense at a public hearing. In the event of removal, the governing body of such municipality or the governing bodies of such municipalities, as the case may be, shall file with the commissioner a record of the proceedings together with a copy of the charges made against the members and its findings thereon, pending the determination of charges against a member, the governing body of such municipality or the governing bodies of such municipalities, as the case may be, may suspend him from office.

§ 46. Non-liability of authority members. No personal liability or accountability shall attach to any member of the Utica transit authority or to any person executing bonds of such authority by reason of the execution or issuance thereof.

§ 47. Disqualification of members and employees. No member or employee of the Utica transit authority should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties, in the public interest. If any member or employee of the Utica transit authority owns or controls an interest, financial or otherwise, direct or indirect, in any property included in any project, which was acquired prior to his appointment or employment, he shall disclose such interest and the date of acquisition thereof in writing to the Utica transit authority prior to such appointment and such disclosure shall be entered upon the minutes of the Utica transit authority.

§ 48. Not within jurisdiction of public service commission. The acquisition, construction, reconstruction or improvement of any omnibus transportation capital project by the Utica transit authority pursuant to this article shall not be subject to the jurisdiction of the public service commission except as provided in sections sixty-eight, sixty-nine, sixty-nine-a, sixty-nine-b, sixty-nine-c and sixty-nine-d of the transportation corporations law.

§ 49. Plans for proposed municipal projects; statement of project costs. The Utica transit authority shall file with the commissioner a copy of each proposed municipal project embodying the plans, specifications, estimated costs and proposed method of financing. Any change made in a municipal project shall be filed with the commissioner by the Utica transit authority. With reasonable promptness after each municipal project shall have been completed and from time to time prior to completion upon request of the commissioner, the Utica transit authority shall file with the commissioner a detailed statement of the cost thereof. All records and financial documents shall be subject to audit by the commissioner and the state comptroller. Upon receipt of a copy of a proposed state project, or of any proposed changes therein, the commissioner may transmit his criticisms and suggestions with reasonable promptness to the Utica transit authority. No change in a state project may be made by the Utica transit authority without the approval of the commissioner and the state comptroller.

§ 50. Statewide transportation planning. Project coordination with statewide transportation plan. Upon review of a proposed municipal project submitted to the commissioner under section forty-nine herein, the commissioner may transmit, within a reasonably prompt time, advisory comments to the Utica transit authority with regard to such project's being a part of or consistent with a statewide comprehensive master plan for transportation promulgated by him and approved by the governor upon the recommendation of the department of state or, in the absence of any such statewide plan, any other recognized long-range regional transportation plan approved by the commissioner or, in the absence of any such regional plan, sound transportation development policy and planning concept. If the commissioner finds such a project to be in conflict with such statewide plan, regional plan or transportation development policy and planning concept, the Utica transit authority shall before undertaking such project, upon the request of the commissioner, state in writing to the commissioner its reasons for undertaking the project notwithstanding such conflict. In no event, however, shall the Utica transit authority submit to the United States or to the State of New York, or any agency or instrumentality of them, an application for a federal or state project unless the application shall have been first approved by the commissioner as being part of or consistent with such statewide plan, regional plan or transportation development policy and planning concept.

§ 51. Comprehensive regional planning. Project coordination with comprehensive regional planning. Prior to undertaking a municipal project, the Utica transit authority shall comply with the provisions of this section.

Where a proposed municipal project is to be located in whole or in part, within the jurisdiction of a multi-county regional planning board which has adopted a regional comprehensive plan, the Utica transit authority proposing such project shall submit a description of the project to such regional planning board. Such regional planning board shall advise the Utica transit authority within fifteen days of the date of such submission as to whether or not the proposed project has a significant regional impact. If the regional planning board determines that the proposed project does not have a significant regional impact, it shall certify that it is not in substantial conflict with the board's regional comprehensive plan. If the proposed project is determined to have a significant regional impact, the regional planning board shall determine, within thirty days from date of the submission of the project description, whether or not it is in substantial conflict with its regional comprehensive plan. In making such determination, the regional planning board may also consider whether the proposed project is properly coordinated with other exisiting or proposed projects within the region. If the regional planning board determines that such project might be in substantial conflict with its regional comprehensive plan, the regional planning board may issue an order to the Utica transit authority directing that such authority not undertake or continue such project for an additional period of forty-five days immediately following such thirty day period. During such additional forty-five day period, the regional planning board shall further review the project and shall hold a public hearing concerning such project. On or before the conclusion of such forty-five day period and after the public hearing, the regional planning board shall determine whether or not such project is in substantial conflict with its regional comprehensive plan, and report its determination to the Utica transit authority sponsoring such project, to the commissioner of transportation, to any other public agency having the power of review or approval of such project, and in a manner conducive to the wide dissemination of such determinations, to the public. If the regional planning board determines that the proposed project is in substantial conflict with its regional comprehensive plan, the Utica transit authority shall before undertaking such project state in writing to the regional board its reasons for undertaking the project notwithstanding such determination of substantial conflict.

Regional planning boards may adopt rules and regulations establishing standards and procedures, consistent with this section, for the review of projects hereunder, and which may exclude specified kinds of projects from such review. Such procedures may contain provisions allowing for informal discussion of preliminary and informal plans for a project subject to review and for preliminary approval or recommendations by the board with respect to the project. Before adopting such rules and regulations, the regional planning board shall consult with the department of state, which may make recommendations concerning such standards and procedures. In the event a proposed project is to be located, in whole or in part, in an area not within the jurisdiction of a multi-county regional planning board which has adopted a comprehensive regional plan, the functions, powers and duties conferred in this section upon such a regional planning board shall apply to the county planning board or boards of any county wherein such project is to be located, in whole or in part, if such county planning board has adopted a comprehensive master plan. In the event there is no such county planning board which had adopted a comprehensive master plan, such functions, powers and duties may be carried out by the department of state.

The regional comprehensive plan referred to under this section shall embody the policy recommendations of the regional planning board for the comprehensive development of the region, and shall include statements of policies, goals and objectives. Before such regional comprehensive plan is adopted by the regional planning board, it shall be certified to by the secretary of state as being adequate for the review purposes of this section. The comprehensive master plan of a county referred to under this section shall embody the same elements as herein prescribed with respect to a regional comprehensive plan, and shall similarly be certified to by the secretary of state.

§ 52. Construction contracts, cancellation of contracts, disqualification to contract with mass transportation authority, statement of non-collusion in bids on proposals. 1. Contracts of the Utica transit authority for construction, alteration, renovation, demolition, excavation or for purchase of materials or supplies shall be in such form and contain provisions as may be deemed advisable by the Utica transit authority. All such contracts in excess of ten thousand dollars shall be made on sealed bids, in compliance with a public notice advertised at least once, not less than twenty days before the date set for the receipt of bids, in the official publication of the municipality in which the main office of the Utica transit authority is located or if no such official publication exists, in a newspaper circulating in the municipality. If the Utica transit authority shall deem it to its best interest or necessary or desirable to effectuate the purposes of this article or the economy and efficiency in construction and operation of a project, the Utica transit authority by majority vote of its members may either reject all bids or readvertise for bids or by unanimous vote of its members may accept a bid other than the lowest bid. In any such contract there may be inserted in the discretion of the Utica transit authority, a provision that additional work may be done or materials and supplies furnished or that work or materials may be omitted for the purpose of completing such contract in accordance with any changes, omissions or additions in the specifications of any such contract. Each contract shall provide that in the case of default by the contractor the Utica transit authority may adopt on behalf of the authority all subcontracts made by such contractor and all such subcontractors shall be bound by such adoption if made, and the authority may relet, with or without public advertisement, the work specified in the original contract, exclusive of so much thereof as shall be provided in any subcontracts so adopted. The Utica transit authority may make rules and regulations governing the qualifications of bidders, the submission of combined bids by two or more contractors, the award and execution of the contract, security, if any, for execution and performance of the contract, and any other matters relating to the contract. The bidding may be restricted to those who shall have qualified prior to the receipt of bids according to standards fixed by the Utica transit authority, provided that notice or notices for the submission of qualifications shall be published in the official publication of the municipality in which the main office of the Utica transit authority is located, or if no such official publication exists, in a newspaper circulating in the municipality, at least once, not less than ten days prior to the date fixed for the filing of qualifications. Nothing in this section shall be construed to limit the power of the Utica transit authority to carry out a project or any part thereof directly by the officers, agencies and employees of the Utica transit authority, or by any government, or to purchase or acquire materials or supplies through the purchasing officer, department or agency of a government.

2. A clause shall be inserted in all specifications or contracts hereafter made or awarded by the Utica transit authority or by any

official of the Utica transit authority, for work or services performed or to be performed or goods sold or to be sold, to provide that upon the refusal by a person who directly or indirectly derives a monetary benefit which is traceable to such a specification or contract, when called before a grand jury to testify concerning any transaction or contract had with the state or of any political subdivision thereof, a public authority, a mass transportation authority or with any public department, agency or official of the state or of any political subdivision thereof or of any public authority or of a mass transportation authority or subcontract thereunder, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction, contract or subcontract.

(a) Such person and any firm, partnership or corporation of which he is a member, partner, director or officer, shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with the Utica transit authority or official thereof or any subcontract thereunder, or sub-contracting with any person, firm, partnership or corporation who or which has entered into any such contract or contracts, in relation to such contract or contracts, for goods, work or services, for a period of five years after such refusal. No person, firm, partnership or corporation who or which has entered into any contract or contracts with the state, or any political subdivision thereof, a public authority, a mass transportation authority, or with any public department, agency or official of the state or any political subdivision thereof or of any public authority, or of a mass transportation authority, for goods, work or services, shall enter into a subcontract thereon with any person, firm or corporation which is disqualified to contract as provided herein. Such clause shall also provide that

(b) Any and all contracts made with the Utica transit authority or official thereof or any subcontract thereunder, since the effective date of this law, by such person and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the Utica transit authority without incurring any penalty or damages on account of such cancellation or termination, but any moneys owing by the Utica transit authority or by a contractor or subcontractor thereunder for goods delivered or work done prior to the cancellation or termination shall be paid.

3. (a) Any person who, when called before a grand jury to testify concerning any transaction or contract had with the state, any political subdivision thereof, a public authority, a mass transportation authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority or of a mass transportation authority, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any mass transportation authority or any official of any mass transportation authority created by the state or any political subdivision, or sub-contracting with any person, firm, partnership or corporation who or which has entered into any such contract or contracts, in relation to such contract or contracts, for goods, work or services, for a period of five years after such refusal or until a disqualification shall be removed pursuant to the applicable provisions of law. No person, firm, partnership or corporation who or which has entered into any contract or contracts with the state, or any political subdivision thereof, a public authority, a mass transportation authority, or with any public department, agency or official of the state or any political subdivision thereof or of any public authority, or of a mass transportation authority, for goods, work or services, shall enter into a subcontract thereon with any person, firm or corporation which is disqualified to contract as provided herein.

(b) It shall be the duty of the officer conducting the investigation before the grand jury before which the refusal occurs to send notice of such refusal, together with the names of any firm, partnership or corporation of which the person so refusing is known to be a member, partner, officer or director, to the commissioner of transportation of the state of New York and the appropriate departments, agencies and officials of the state, political subdivisions thereof or public authorities with whom the person so refusing and any firm, partnership or corporation of which he is a member, partner, director or officer, is known to have a contract.

4. (a) Any firm, partnership or corporation which has become subject to the cancellation or termination of a contract or subcontract or disqualification to contract or subcontract on account of the refusal of a member, partner, director or officer thereof to waive immunity when called to testify, as provided in subdivisions two and three of this section, may, upon ten days' notice to the attorney general and to the officer who conducted the investigation before the grand jury in which the refusal occurred, make an application at a special term of the supreme court held within the judicial district in which the refusal occurred for an order discontinuing the disqualification. Such application shall be in the form of a petition setting forth grounds, including that the cooperation by petitioner with the grand jury at the time of the refusal was such, and the amount and degree of control and financial interest, if any, in the petitioning firm, partnership or corporation by the member, partner, officer or director who refused to waive immunity is such that it will not be in the public interest to cancel or terminate petitioner's contracts or subcontracts or to continue the disqualification, as provided in subdivisions two and three of this section.

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

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

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

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

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

5. (a) Every bid or proposal hereafter made to a mass transportation authority where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury: Non-collusive bidding certification.

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

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

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

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

(2) A bid shall not be considered for award nor shall any award be made where (1) (i) (ii) and (iii) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (1) (i) (ii) and (iii) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the Utica transit authority to which the bid is made

determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of paragraph (a) of this subdivision.

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

§ 53. Financial assistance from and cooperation with the state and federal governments. The Utica transit authority is empowered to include in agreements with the state and/or federal governments provisions that such government or governments shall have the right to approve in advance of execution all contracts entered into by the authortiy and to supervise and approve the construction, maintenance and operation of any project to which such government or governments may render any assistance, and subject to the restrictions contained in this article, any other terms, covenants and provisions which the Utica transit authority may deem necessary or appropriate.

§ 54. Bonds. 1. The Utica transit authority shall have the power, and is hereby authorized, from time to time to borrow money and issue bonds in such amounts and upon such terms as it may deem advisable for any of the purposes of this article. Bonds, except those for the acquisition of any omnibus for the acquisition, construction, reconstruction or improvement of any omnibus capital facility and any capital equipment used in connection therewith may be issued for periods not exceeding thirty years and for a period not exceeding the probable life of a municipal project which said period shall be calculated from the date of the bonds. Bonds for the acquisition of any omnibus may be issued for periods not exceeding ten years and for a period not exceeding the probable life of such equipment which said periods shall be calculated from the date of the bonds. The Utica transit authority shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it but no such refunding bonds shall mature later than the expiration of the maximum period permitted by this subdivision at the time of the issuance of the bonds to be refunded for the municipal project for which such bonds were issued. Such period shall be construed to commence from the date of issuance of the bonds to be refunded.

2. The Utica transit authority is authorized to issue, whenever it may deem it necessary to do so, notes at a rate of interest not exceeding seven and one-half per cent per annum in anticipation of the sale of bonds. Such notes shall mature within a period not to exceed one year from the date of their issue but may be made subject to the right of earlier payment. The proceeds of the sale of such notes shall be used only for the purposes for which may be used the proceeds of the sale of bonds. Any such notes may be renewed or may be refunded through the sale of similar notes but no such renewal or refunding notes shall be issued after the sale of bonds. Such notes, renewal notes or refunding notes shall not mature beyond one year after completion of the municipal project. Except as may be provided otherwise in this article, the Utica transit authority shall have the same powers in connection with the issuance and securing the payment of its notes as it has in connection with the issuance and securing payment of its bonds.

3. The Utica transit authority may issue its interim certificates, or other temporary obligations, to the purchaser of bonds pending the authorization, preparation, execution or delivery of definitive bonds. Such interim certificates, or other temporary obligations, shall be in such form, contain such terms, conditions and provisions, bear such date

or dates, and evidence such agreements relating to their discharge or payment or to the delivery of definitive bonds as the authority may by resolution determine.

§ 55. Provisions of bonds. Bonds of the Utica transit authority shall be authorized by its resolution and may be issued singly or in one or more series, and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, not exceeding seven per cent per annum, be in such denomination or denominations, interchangeable or otherwise, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner with or without authentication, and be subject to such terms of redemption with or without premium, and be secured in such manner, as such resolution may provide. The bonds may be sold by the authority at public or private sale at such price or prices as the Utica transit authority may determine.

§ 56. Negotiability of bonds. Whether or not any bonds, interim certificates or other obligations of the Utica transit authority issued pursuant to this article are of such form and character as to be negotiable instruments under article eight of the uniform commercial code, such bonds, interim certificates or other obligations shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of article eight of the uniform commercial code, unless such bonds, interim certificates or other obligations expressly provide otherwise.

§ 57. Signature on bonds. In case any of the members or officers of the Utica transit authority whose signatures appear on any bonds or coupons shall cease to be such members or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery.

§ 58. Repurchase of bonds. The Utica transit authority shall have power to purchase any bonds issued by it for the purpose of retirement or investment. The Utica transit authority shall not purchase such bonds at a price in excess of the face value thereof plus a premium of four per cent. All bonds purchased for the purpose of retirement shall be cancelled.

§ 59. Suit on bonds. In any suit, action or proceeding upon any bond of the Utica transit authority or the security therefor, any such bond reciting in substance that it has been issued by such an authority to aid in financing a municipal project to provide omnibus transportation facilities pursuant to the procedure required in this article shall be conclusively deemed to have been issued for a municipal project of such character and pursuant to such procedure.

§ 60. Bond covenants. 1. In connection with the issuance of bonds or the incurring of an obligation, and to secure the payment of such bonds or obligations, the Utica transit authority, in addition to its other powers, may:

(a) Pledge, covenant to pledge or covenant against pledging, all or any part of its rents, fares, fees, revenues, subsidies, gifts, grants or other moneys received or to be received to which its right then exists or may thereafter come into existence; covenant against permitting or suffering any lien thereon; it is the intention hereof that any pledge of revenues or other moneys made by the Utica transit authority shall be valid and binding from the time when the pledge is made, that revenues or other moneys so pledged and thereafter received by the Utica transit authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Utica transit authority, irrespective of whether such parties have notice thereof;

(b) Mortgage, covenant to mortgage or covenant against mortgaging, all or any part of its property, real or personal, then owned or thereafter acquired; covenant against permitting or suffering any lien thereon;

(c) Covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any municipal project or part thereof;

(d) Covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; provide for the replacement of lost, destroyed or mutilated bonds;

(e) Covenant as to what other or additional debts may be incurred by it;

(f) Covenant that the Utica transit authority warrants the title to the premises;

(g) Covenant as to the rents, fares and fees to be charged, the amount to be raised each year or other period of time by rents, fares, fees and other revenues, and as to the use and disposition to be made thereof;

(h) Covenant as to the use of any or all of its property, real or personal;

(i) Create or authorize the creation of special funds segregating (1) the proceeds of any grants, subsidies or contributions; (2) all the rents, fares, fees and revenues of any municipal project or projects; (3) any moneys held for the payment of the costs of operation and maintenance of municipal projects, or as a reserve for the meeting of contingencies in the operation and maintenance thereof; (4) any moneys held for the payment of the principal of and interest on its bonds or the sums due under its leases or as a reserve for such payments; and (5) any moneys held for any other reserves or contingencies; and covenant as to the use and disposal of the moneys held in such funds;

(j) Redeem the bonds and covenant for their redemption, and provide the terms and conditions thereof;

(k) Covenant against extending the time for the payment of its bonds or interest thereon;

(l) Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(m) Covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon, and the use and disposition of insurance moneys;

(n) Vest in an obligee, in the event of a default by the Utica transit authority the right to cure any such default and to advance any moneys necessary for such purpose, and covenant that the money so advanced by an additional obligation of such authority with such interest, security and priority as may be provided in any resolutions, trust indenture, mortgage, lease or contract;

(o) Covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;

(p) Covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation;

(q) Covenant to surrender possession of a municipal project or projects or parts thereof upon the happening of an event of default; and vest in an obligee the right, upon such default, without judicial proceedings, to take possession and use, operate, manage, and control such projects or any part thereof, and to collect and receive rents, fares, fees and revenues arising therefrom in the same manner as such authority itself might do, and to dispose of the moneys collected in accordance with the agreement of such obligee with the Utica transit authority;

(r) Vest in a trustee or trustees the right to enforce any covenant to secure, or pay the bonds, or otherwise relating to such bonds; provide for the powers, duties and limitations of liabilities of such trustee or trustees, or the holders of bonds, or any proportion of them, may enforce any such covenant;

(s) Vest in a trustee or in other obligee the right, upon any happening of an event of default, to foreclose through judicial proceedings or through the exercise of a power of sale without judicial proceedings, any mortgage as to all or such part or parts of the property covered thereby as such trustee or other obligee shall elect; the institution, prosecution and conclusion of any such foreclosure proceedings or the sale of any such parts of the mortgaged property shall not affect in any manner or to any extent the lien of the mortgage on the parts of the mortgaged property not included in such proceedings or not sold as aforesaid;

(t) Make such other covenants and do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds or make them more marketable, not withstanding that such covenants, acts or things may not be enumerated herein; execute all instruments necessary or convenient in the exercise of the powers herein granted, or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified, as the purchaser of the bonds of an authority may require.

2. In case of conflict between this section and article nine of the uniform commercial code, this section shall control.

§ 61. Bonds and notes as legal investments. The bonds and notes of the Utica transit authority are hereby made securities in which all public officers and bodies of the state and all municipalities and municipal subdivisions thereof, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now, or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. Notwithstanding the provisions of any other general or special law to the contrary, the bonds and notes are also hereby made securities which may be deposited with and may be received by all public officers and bodies of the state of New York and all municipalities and municipal subdivisions thereof for any purpose for which the deposit of bonds or other obligations of the state is now, or may hereafter be, authorized.

§ 62. Remedies against the Utica transit authority. 1. In an action or proceeding to foreclose a mortgage on property of the Utica transit authority, the authority and all other necessary parties, shall be made parties defendant and shall take such steps in said action as may be necessary to protect the public interest therein and no costs shall be awarded against them. Wherever under the instrument creating a lien a notice of default in writing is required to be served upon the Utica transit authority before the institution of a foreclosure action or proceeding, a copy of such notice shall be served upon the chairman of the authority at least five days before the institution of such proceedings. At such a sale of the property of the mass transportation authority pursuant to foreclosure or other proceedings, the municipality or municipalities within whose territorial jurisdiction the property exists may purchase the property affected; or such municipality or municipalities may, prior to the institution of a foreclosure action or proceeding, or during such action or proceeding make such payment or take such other steps as may be necessary to cure any defaults that may have occurred and such steps as may be necessary to protect the property of the Utica transit authority and the public interest.

2. In the event that the Utica transit authority shall default in the payment of principal of or interest on an issue of bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or, in the event the authority shall fail or refuse to comply with the provisions of this article or shall default in an agreement with the holders of an issue of bonds then outstanding, the holders of twenty-five per cent of the aggregate principal amount of the bonds of the issue then outstanding by instrument or instruments filed in the office of the clerk of the county in which the principal office of the Utica transit authority is situated and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of the bonds for the purposes herein provided. Such trustee may declare all the bonds due and payable, but before declaring the principal of the bonds due and payable, he shall first give thirty days' notice in writing to the authority, and, if all defaults shall be made good, then with the consent of the holders of twenty-five per cent of the aggregate principal amount of the bonds then outstanding, he shall annul the declaration and its consequences. He shall, in addition to any powers granted by this section, have and possess all of the powers necessary or appropriate for the exercise of functions specifically set forth herein

or incident to the general representation of bondholders in the enforcement and protection of their rights.

3. In addition to any other rights and remedies, but subject to such limitations as may be made by contract, any obligee, lessor or mortgagee, or any trustee or agent designated in the bonds of the Utica transit authority or appointed as provided in paragraph two of this section, or under a resolution, mortgage or indenture executed by the Utica transit authority as security for its bonds may:

(a) bring suit upon the bonds of the Utica transit authority;

(b) by suit, action or special proceeding at law or in equity enforce all rights of the bondholders, including the right to require the Utica transit authority to collect revenues, rates, fares, fees, rentals and other charges adequate to carry out any agreement as to, or pledge of, such revenues, rates, fares, fees, rentals and other charges, and to require the authority to carry out any other agreement with the bondholders and to perform its duties under this article;

(c) by suit, action or special proceeding at law or in equity compel the authority to perform each and every term, provision and covenant contained in any agreement of the authority with an obligee, trustee, mortgagee or lessor and require the performance of any or all such covenants and agreements of the Utica transit authority and of the duties imposed upon such authority by this article;

(d) by action or suit, enjoin any acts or things which may be unlawful or in violation of the rights of such obligee, trustee, mortgagee, or lessor;

(e) by suit, action or proceeding in any court of competent jurisdiction compel possession of any project or any part thereof to be surrendered to such obligee, trustee, mortgagee, or lessor having the right to such possession under any agreement with the authority;

(f) by suit, action or proceeding in any court of competent jurisdiction obtain the appointment of a receiver of any municipal project of the mass transportation authority or any part thereof and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of such project or any part or parts thereof and operate and maintain the same, and collect and receive all fees, rates, fares, rents, revenues, or other charges thereafter arising therefrom in the same manner as the Utica transit authority itself might do, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct;

(g) by action or suit require the Utica transit authority to account as if it were the trustee of an express trust.

4. The supreme court of the state shall have jurisdiction of a suit, action or proceeding by a trustee on behalf of the bondholders. The venue of the suit, action or proceeding shall be laid in the county in which the principal office of the Utica transit authority is situated.

5. In a suit, action or proceeding by a trustee for the bond holders, the fees, counsel fees and expenses of the trustee and of the receiver, if any, shall constitute taxable disbursements and all costs and disbursements allowed by the courts shall be a first charge on revenues, rates, fares, fees, rentals and other charges derived from the municipal project.

§ 62-a. Actions against authority. Except in an action for wrongful death, no action or special proceeding shall be prosecuted or maintained against the authority, its members, officers, or employees for personal injury or damage to real or personal property alleged to have been sustained by reason of the negligence or wrongful act of the authority or of any member, officer, agent or employee thereof, unless (i) a notice of claim shall have been made and served upon the authority within the time limit by and in compliance with section fifty-e of the general municipal law, (ii) it shall appear by and as an allegation in the complaint or moving papers that at least thirty days have elapsed since the service of such notice and that adjustment or payment thereof has been neglected or refused, and (iii) the action or special proceeding shall be commenced within one year and ninety days after the happening of the event upon which the claim is based. An action against the authority for wrongful death shall be commenced in accordance with the notice of claim and time limitation provisions of title eleven of article nine of the public authorities law.

§ 63. Liability of state or municipality. The bonds or other obligations of the Utica transit authority shall not be a debt of the state or a municipality and neither the state nor a municipality shall be liable thereon nor shall the Utica transit authority have power in any way to pledge the credit of the state or a municipality, nor shall the transfer from the Utica transit authority to a municipality or the vesting in a municipality of property theretofore belonging to the Utica transit authority impose upon the municipality any obligations except such as it may expressly assume.

§ 64. Tax exemptions. 1. The Utica transit authority shall be exempt from the payment of (a) any taxes or fees to the state or any subdivision thereof, (b) any fees to any officer or employee of the state or of any subdivision thereof, except where it is provided by or pursuant to law that such officer or employee is personally entitled to such fees as compensation for services rendered or performed by him in his official capacity.

2. Bonds, mortgages, notes and other obligations of the Utica transit authority are declared to be issued for a public purpose and to be public instrumentalities and together with interest thereon, shall be exempt from tax.

3. The property of the Utica transit authority shall be exempt from all local and municipal taxes. The Utica transit authority may agree with any municipality within the Utica transit authority's jurisdiction that such municipality will (a) fix a sum which shall be paid to it annually by the Utica transit authority in respect of each municipal project; or (b) agree that the Utica transit authority shall not pay or be liable to pay any sum whatsoever in respect of a municipal project or projects for any year or years; or (c) agree with the Utica transit authority upon the sum to be paid by the Utica transit authority for any year or years in respect of a municipal project or projects, or accept or agree to accept a fixed sum or other consideration in lieu of such

payment; provided, however, that the sum fixed, or agreed to be paid by the Utica transit authority, for any year shall in no case exceed the sum last levied as an annual tax upon the property included in such project prior to the time of its acquisition by the Utica transit authority.

§ 65. Depositories of funds. In order to protect funds deposited by the Utica transit authority all banks, bankers, trust companies or other persons carrying on a banking business, organized under the laws of the state, are authorized to give to the authority an undertaking with such sureties as shall be approved by the Utica transit authority, faithfully to keep and pay over upon the order of the Utica transit authority any such deposits and agreed interest thereon, or in lieu of said sureties, to deposit as collateral such securities and in such amounts as may be agreed upon with the Utica transit authority pursuant to a collateral deposit agreement in form and terms satisfactory to the Utica transit authority. The collateral to be deposited shall consist of securities in which savings banks may legally invest funds within their control.

§ 66. Filing of by-laws, rules and regulations. 1. The Utica transit authority shall file with the commissioner a copy of any by-laws, rules and regulations and amendments thereto adopted by it from time to time. No such by-laws, rules and regulations and amendments thereto shall be effective until filed with the commissioner.

2. No rules and regulations, and amendments thereto, adopted by the Utica transit authority from time to time, except such as relate to its organization or internal management, shall be effective until filed in the office of the department of state.

§ 67. Dissolution. The Utica transit authority may apply to the supreme court in any county within the Utica transit authority's jurisdiction for an order dissolving such authority. The court thereupon shall hold a hearing in open court after such notice of hearing as the court may require. Upon a showing to the satisfaction of the court that provision has been made for the payment or satisfaction of all of the outstanding obligations of the Utica transit authority and for the necessary expenses for the liquidation thereof, the court may order that the Utica transit authority be dissolved. The court shall also provide for disposition of the property of the Utica transit authority.

§ 68. Disposal of records. 1. Notwithstanding the provisions of any general, special or local law, the Utica transit authority or officer or employee thereof is hereby empowered to destroy, sell or otherwise dispose of any book, paper, map photograph, microphotograph or other record regardless of its physical form or characteristic, which has been made, acquired, or received or is now in its custody and which the Utica transit authority determines no longer has sufficient administrative, legal, fiscal, research or historical value to warrant its continued retention and preservation, provided the Utica transit authority authorizes such destruction, sale or other disposition.

2. The provisions of this section shall not apply to the following records of the Utica transit authority unless copies for retention are reproduced as provided in section sixty-nine of this article:

(a) The official copy of the minutes of the Utica transit authority including appendices and attachments thereto.

(b) The official copy of any annual report of the Utica transit authority to the commissioner.

(c) Records which have not been retained for such period of time as may be required:

(1) by the federal government or any of its agencies;

(2) by rules and regulations of the state comptroller;

(3) by rules and regulations of the commissioner.

§ 69. Reproduction of records. The Utica transit authority may cause any paper, document or other record kept or recorded by it to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic or other process which accurately reproduces or forms a durable medium for so reproducing the original. Such reproduction, when satisfactorily identified, shall be deemed to be an original for all purposes and is as admissible in evidence as the original itself in any judicial or administrative proceeding, and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of the court.

ARTICLE 2-E

SPECIAL PARKWAYS

§ 70. Special parkways. 1. The department shall be responsible for and shall have jurisdiction for the purposes of construction, reconstruction, improvement and maintenance of the special parkways as designated in this article, and for expediting the construction, reconstruction and improvement of said special parkways to safe, modern standards.

2. As used in this article, the term "special parkways" shall mean the following roadways which are designated and set forth within the county of Westchester:

(a) the Hutchinson river parkway from the New York city line to the Connecticut line;

(b) the Saw Mill river parkway from the New York city line northerly to interstate route six hundred eighty-four;

(c) the Cross County parkway connecting the Saw Mill river and Hutchinson river parkways;

(d) the Taconic state parkway from the Kensico circle north to the Westchester-Putnam line; and

(e) the Sprain Brook parkway from the Bronx river parkway at or about Dewitt avenue at Bronxville northerly to a connection with the Taconic state parkway at Hawthorne interchange.

3. Special parkways shall be constructed, reconstructed, improved, operated and maintained by the department. Further, the commissioner of transportation shall do all within his power to expeditiously secure federal aid highway financing for such additional construction, reconstruction and/or improvement of said special parkways as may be needed. In the event federal-aid is to be utilized for such special parkways, they may be constructed, reconstructed, improved, operated and/or maintained subject to the provisions of federal-aid therefor. Such special parkways shall be constructed, reconstructed, improved, operated and/or maintained in accordance with all of the provisions of the highway law applicable to state highways, including the acquisition, management and disposition of property therefor, and according to such designs and types as the commissioner may determine. All provisions of the vehicle and traffic law applicable to state highways and not inconsistent with this article shall be applicable to special parkways. Such special parkways shall be operated and maintained by the department to such standards of maintenance as the commissioner may determine.

§ 71. Powers of commissioner. In addition to all powers conferred by other provisions of law, the commissioner with respect to special parkways designated by this article shall have power:

1. Subject to the approval of the state comptroller to provide procedures for the receipt, deposit and security of moneys collected under authority of this article and to designate the agent or agents which shall be empowered to carry out such procedures.

2. To make rules and regulations governing the use and safety standards of the special parkway facilities, including the power to lease property, regulate the use and operation of gasoline stations, restaurants and other facilities for the public on or along the special parkways. Any lease of property of the special parkways shall be subject to the approval of the state director of the budget.

5. To limit or prohibit travel by types or classes of commercial vehicles as may be required due to roadway design or safety

considerations, and to establish speed limits and standards of travel safety on all such special parkways designated by this article.

6. To determine the points at which there shall be access from other roads and highways to the special parkways designated by this article and to determine points of egress from such special parkways, and to otherwise act with respect to control of access along such special parkways.

7. To dispose of, pursuant to the provisions of the highway law applicable to state highways, any real property deemed by the commissioner not to be necessary for the operation of special parkways, or to otherwise, in whole or in part, hold, manage, sell or exchange such property on terms beneficial to the state. However, any property previously owned by Westchester county shall revert to the county when such property is no longer necessary and utilized for the operations of special parkways.

ARTICLE 2-F
NEW YORK STATE
RURAL PUBLIC TRANSPORTATION COORDINATION ASSISTANCE PROGRAM

§ 73-a. Short title. This article may be cited as the "rural public transportation coordination assistance program".

§ 73-b. Legislative findings and purposes. The legislature hereby finds, determines, and declares that:

1. the inability of persons in rural areas to access public or private transportation services often is detrimental to the public health, safety and general welfare because such persons are thereby unable to receive regular medical care and public services, do shopping, participate in specialized recreation and education programs, and obtain employment;

2. the number and proportion of persons without access to essential transportation services in rural environs is alarmingly high and could increase in the future, thereby further increasing the demand for specialized transportation services in said areas;

3. added social burdens frequently fall upon state and local governments because of involuntary isolation of individuals and families in rural areas who are unable to obtain employment, public services, health care, educational or other essential human services;

4. lack of a comprehensive state policy to promote the development of coordinated public transportation services in the state's rural regions has inhibited the formation of such services, thereby contributing to a great disparity in the nature and levels of transportation services available in said rural areas and the inefficient use of many existing transportation resources;

5. such unique rural conditions as low population density, limitations of size and resources and the general absence of private common carriers call for more innovation and flexibility in the development of coordinated public transportation services in rural environs, which would include more intensive use of existing transportation services that may now service a single clientele and are frequently underutilized;

6. existing federal, state and local public transportation assistance programs are of vital importance in providing mobility to persons in rural areas of New York state, and increased coordination and more intensive use of such programs would or could increase the cost-effectiveness of these programs and enhance the availability of transportation services to those individuals and families in need; and

7. the establishment of a rural public transportation coordination assistance program would or could increase the mobility of individuals and families in the state's rural regions and make available to those in need more of the limited transportation resources that now exist.

8. the establishment of a rural transportation coordination assistance program is intended to be in addition to existing programs and services required of the department of transportation and this act shall in no manner or means detract from the other services, resources and programs now provided by such department.

§ 73-c. Definitions. Whenever used in this article, the following terms shall have the respective meanings:

1. "Department" shall mean the state department of transportation.

2. "Commissioner" shall mean the commissioner of transportation.

3. "Committee" shall refer to the New York state interagency coordinating committee on rural public transportation as hereinafter set

forth.

4. "Transportation disadvantaged person" shall mean any person, who by reason of physical, economic or other circumstances does not have access to private personal transportation or is unable to use private personal transportation, either permanently or temporarily such as frail, elderly, physically or mentally handicapped, low-income, youth, unemployed or underemployed, and other individuals who may need public transportation services for gaining access to human or public services, health care, educational, recreational, shopping or employment opportunities. Identification of persons in this group shall not preclude such persons from being considered "general public" in any public transportation service criteria established pursuant to this article.

5. "Public transportation service" shall mean a passenger transportation service which, during its hours of operation, is available on an equal opportunity basis to any person, without preference for service availability, eligiblity or design being given to any person or population sub-group because of age, gender, race, national origin, creed or agency client status, and which is regularly advertised and marketed as available to the general public. Nothing in this article shall be deemed to mean that the transportation services operated or provided by human or social service agencies solely for their clients or programs constitute, in and of themselves, public transportation services.

6-a. "Transportation provider" shall mean any public, private or not-for-profit entity utilizing public funds to provide or contract for public transportation services for the benefit of the general public or specific client groups.

6-b. "Operator of passenger transportation service" shall mean the municipal government or public transportation authority which assumes full responsibility for the operation of the service or a common or contract carrier under contract to said government or authority for the purpose of assuming said responsibility.

7. a. "Coordinated transportation service" in a rural county shall mean a passenger transportation service formed by the pooling or sharing, by contract, of funds, facilities, vehicles, equipment and other resources used for passenger transportation for the purpose of improving the mobility of rural residents through increased service levels, so that the coordinated service is under the direction and control of a single operator of passenger transportation having the authority for establishing the service's operating hours, routes, schedules, dispatching and other operating features and when the resulting transportation service serves more passengers for the same or reduced amount of government expenditure than the previoulsy uncoordinated services. A coordinated transportation service may include an existing public transportation service operating within the rural county. Nothing contained herein shall require a transportation provider to contribute funds or services; current providers may participate in whole or in part in the coordinated service.

b. "Coordinated public transportation service" shall mean a coordinated transportation service which is predominately a public transportation service as defined in this article. Such coordinated public transportation service shall offer service to the general public to at least the same extent and degree, in terms of service levels, operating hours and geographic coverage, as service is offered for clients of human service agency programs, and seeks to increase service to transportation disadvantaged persons who do not receive transportation from a human or social services agency program.

8. "Rural counties" shall mean those New York state counties having populations of two hundred thousand or less.

9. "Services coordinator" shall mean the person, authority, agency or corporation designated by resolution of a rural county's governing body to undertake or oversee preparation and implementation of the rural county's public transportation service plan in accordance with this article. Such person, authority, agency or corporation shall be chosen from among those who can fairly and equitably address the needs of all

transportation disadvantaged persons and the general public, without preference to any one population sub-group or component of the transportation disadvantaged population.

§ 73-d. Interagency coordinating committee on rural public transportation. 1. There is hereby created a committee to be known as the "interagency coordinating committee on rural public transportation", to be comprised of nineteen members. The commissioner or his or her designee shall serve as chairperson. Twelve of such members shall be the following or his or her duly designated representative: the director of the office for the aging; the commissioner of education; the commissioner of labor; the commissioner of health; the commissioner of the office of mental health; the commissioner of the office of addiction services and supports; the commissioner of the office for people with developmental disabilities; the commissioner of the office for temporary and disability assistance; the executive director of the New York state justice center for the protection of people with special needs; secretary of state; the commissioner of agriculture and markets and the commissioner of the office of children and family services. Six additional members, five of whom shall be transportation providers or consumers representing rural counties and one of whom shall be a representative of a labor union affiliated with rural public transportation systems receiving mass transportation operating assistance pursuant to section eighteen-b of this chapter, shall be appointed to serve a term of three years as follows: two by the temporary president of the senate, two by the speaker of the assembly, one by the minority leader of the senate, and one by the minority leader of the assembly. Efforts shall be made to provide a broad representation of consumers and providers of transportation services in rural counties when making such appointments. Members of the committee shall receive no salary. Any vacancies on the committee shall be filled in the manner provided for in the initial appointment. Beginning January first, two thousand twenty-two, the committee shall meet at least once every three months and, beginning January first, two thousand twenty-four, the committee shall meet at least once every four months.

The commissioner shall cause the department to provide staff assistance necessary for the efficient and effective operation of the committee.

2. The committee shall:

a. identify programs and the annual amounts and sources of funds from such programs that are eligible to be used to support a coordinated public transportation service, and the annual amounts and sources of such funds that are actually used for client transportation or for transportation of persons in connection with agency-affiliated programs or services; such data shall be provided on a county basis;

b. identify restrictions on existing programs that inhibit funds from such programs being used to pay for a coordinated public transportation service in rural counties;

c. recommend changes in state or local laws or regulations that would improve the coordination of funds, facilities, vehicles or equipment and other resources used for transportation at the local level;

d. upon request, compile and forward to the commissioner any data or other information required by this section;

e. conduct a study, in consultation with the department, of the availability of public transportation services in rural counties. Such study shall identify, examine and review the following: the efficiency, effectiveness, quality and availability of public transportation services in rural counties; the current and projected operating and capital costs, revenues, subsidies, and ridership and service area data of each public transportation system operating within rural counties; the barriers and financial challenges to providing and operating public transportation services in rural counties; and the demographics of the populations which have, and those which lack, access to public transportation services in rural counties. Such study shall include findings and recommendations to expand the level and availability of public transportation services in rural counties. On or before January first, two thousand twenty-three, the committee shall deliver such study to the governor, the temporary president of the senate, the speaker of the assembly, and the chairs of the senate and assembly transportation committees; and

f. beginning June first, two thousand twenty-four and on the same date in each succeeding year, submit an annual report to the governor, the temporary president of the senate, the speaker of the assembly, and the chairs of the senate and assembly transportation committees on the level and availability of public transportation services in rural counties.

§ 73-e. Rural public transportation coordination assistance program. 1. Program established. There is hereby established a rural public transportation coordination assistance program which shall:

a. enhance the access of people in rural counties to health care, shopping, education, employment, public services and recreation services and opportunities;

b. assist in the establishment, maintenance, development, improvement and use of public transportation services in rural counties;

c. encourage and facilitate the most efficient and economical use of all federal, state and local funds used to provide passenger transportation in rural counties through the establishment of a coordinated public transportation service in each county; and seek to increase the productivity of existing programs used for transportation by increasing the hours of vehicle operation and by expanding services and service eligibility in such manner as to transport more persons, especially those in need of transportation but who do not typically receive transportation services;

d. provide for the participation of public and private for profit and not-for-profit transportation providers, school districts and volunteers in coordinated public transportation services in rural counties to the maximum extent feasible.

2. Eligible expenses and services. The department shall, in consultation with the interagency coordinating committee on rural public transportation, define and determine the categories or types of expenses or services that will be eligible for financial assistance. Public transportation services funded under this article should be designed to maximize usage by the public, including transportation disadvantaged persons. Rail, air, water, freight, emergency medical, charter or tour transportation services shall not be eligible for assistance provided by this article. No payment of financial assistance under this section shall be made for any expenses incurred by a rural county or its subcontractors prior to the date it receives written notice from the commissioner that it shall be awarded a grant under this article.

3. Technical assistance and transportation management services. The department may, at the request of a services coordinator, provide technical transportation assistance to said coordinator to help the coordinator comply with program standards and guidelines issued by the commissioner. Additionally, the department may arrange to sponsor training programs which will enable services coordinators to perform the duties required by this article. The department may furnish to and periodically update for services coordinators information relating to existing rural transportation services in the state. Such information may include but not be limited to:

a. a brief description of the nature and scope of existing rural public transportation services, including a listing of transportation providers and services coordinators;

b. the identification of unique operating circumstances, and innovative management or transportation services delivery techniques.

4. Transportation services coordination between counties and regions. The department may identify and attempt to coordinate the use of transportation services outside of individual rural counties and between counties in order to enable persons to be transported outside a county and or outside a region and the department may identify and promote the

intercounty use of transportation facilities.

5. Coordination of federal, state, local and private aid; report. The department may compile and maintain current information on available and pending federal, state, local and private aid affecting coordinated public transportation services in rural counties. The department may request and shall be entitled to receive information from state or local agencies regarding the amount of federal, state and local aid received by public and private nonprofit organizations providing or contracting for transportation services and the purpose for which the aid is received. The commissioner may, in consultation with the interagency coordinating committee on rural public transportation, use the following criteria to recommend policies to the governor and the legislature that would or could promote compliance with the purposes of this subdivision:

a. elimination of duplicative and inefficient administrative costs, policies and management;

b. greater utilization of resources for providing effective and efficient transportation services;

c. elimination of duplicative and inefficient transportation services;

d. development of transportation services which meet the needs of the general public and insure services adequate to the needs of transportation disadvantaged persons;

e. protection of the rights of privately operated public transportation providers;

f. coordination of transportation services providers, in order that individual providers, when participating within a coordinated public transportation services program, together provide an integrated, comprehensive service;

g. management of equipment and facilities purchased with public funds in order that efficient and routine maintenance and replacement is accomplished.

§ 73-f. Local coordination of rural public transportation services. Transportation services funded under this article must be coordinated with transportation services funded by other federal, state and local sources. Public, private, and private non-profit corporations or organizations applying for or receiving federal, state or local aid in order to provide or contract for public transportation services or transportation to the general public and specific clientele groups in rural counties, shall coordinate and integrate funding and resulting services, to the maximum extent possible, with services coordinators in said counties in accordance with this article. No rural county shall qualify for aid or assistance authorized pursuant to this article unless said county shall first appoint a services coordinator. An individual, agency or corporation may be designated a services coordinator by the county executive, if any, or the county legislative body in a rural county in accordance with rules promulgated by the commissioner which rules shall establish criteria for selecting and terminating coordinators. A rural county may terminate the services of a services coordinator at any time following established county procedures for same and may change its designation of a services coordinator at any time in accordance with this article. A rural county's designated services coordinator may request, from public and private agencies receiving federal, state or local aid in that county, information or data related to transportation services, facilities, equipment, usage, costs, revenues and funds as he or she may deem necessary for the preparation, revision, updating and implementation of the county's coordinated public transportation service plan. The extent to which such information is provided by agencies wishing to participate in the program may be considered by the department in the awarding of grants.

§ 73-g. Financial assistance for creation of coordinated rural public transportation services. 1. The commissioner may approve grants to any rural county having no coordinated public transportation service, for the purpose of developing such a service, and such approval shall reflect on ongoing funding commitment to the extent necessary to develop and implement a county plan. Such grants shall be awarded in amounts up to a maximum of forty-five thousand dollars for up to three successive years, subject to the amounts of an annual appropriation to be included in the state budget, and shall be utilized by such county solely to pay for its eligible costs incurred in the development and implementation of coordinated public transportation service plan for said county. No grant shall be approved for a rural county until the commissioner has certified to the director of the division of the budget that said county will appropriate for the purpose of planning and implementation of such coordinated public transportation service plan, county funds equivalent to at least ten percent of the grant to be awarded the first year, twenty percent of the grant awarded the second year, and thirty percent of the grant to be awarded the third year.

2. Each grant shall be considered by the commissioner upon application by a county, signed by the chief executive officer of the county, if any, or the chairperson of the county legislative body, including but not limited to, the general intent and purpose of the project; a general statement of the expected benefits to derive therefrom; and an organizational statement, designating the person responsible for managing the grant, and the manner by which the county will maintain oversight of the expenditure of grant funds. Such application shall also state that the county will appropriate an amount equivalent to at least ten percent of the grant to be awarded the first year, twenty percent of the grant awarded the second year, and thirty percent of the grant to be awarded the third year.

3. Upon notification by the commissioner of the approval of an application for funding under this section, the services coordinator shall prepare a countywide coordinated public transportation service plan in accordance with guidelines issued by the commissioner. No such funds shall be used for purchase of capital equipment. In the event a plan is completed and approved within one year and funds awarded to a rural county for this purpose are not fully expended, the remaining unexpended funds may be utilized to implement such plan.

a. The commissioner shall by rule issue program guidelines for preparing a countywide coordinated public transportation service plan. Such guidelines may address, but not be limited to, the following elements of the plan:

(1) provision for consultation with existing transportation providers and purchasers, the county executive, if any, the county legislature, the general public and any other persons interested in the plan;

(2) a description of the geographic area to be served;

(3) a description of existing transportation services, facilities, equipment, and usage;

(4) a description of the nature and levels of existing funding sources;

(5) a description of any new funding sources that are proposed to be included in the coordinated public transportation service program;

(6) provision for the retention of existing levels of human service agency funding for transportation services;

(7) provision for the inclusion of federal and state public transportation operating assistance;

(8) provision for continuation of existing levels of service to agency clients and the general public currently receiving service;

(9) specific provision of new services for persons in need of transportation who are not currently served or sponsored by a human service agency or program;

(10) provision for the increased utilization of vehicles which currently provide transportation services;

(11) procedures for the regular advertising and marketing of the coordinated public transportation service indicating that such service is open to the general public, and publication of methods by which the general public can access and utilize available coordinated public transportation service;

(12) performance, productivity and other measures that shall be used to measure accomplishment of coordinated public transportation service;

(13) uniform definitions related to record-keeping in order to maintain consistency among counties;

(14) provision for equitable sharing of total coordinated public transportation service operating costs among participating providers, agencies, and program sources;

(15) provision for a centralized accounting service that provides primary documentation for all revenues and expenses associated with administering and coordinating rural public transportation service in the county;

(16) investment of one person or office with responsibility for managing the assets, operations and funding of coordinated rural public transportation service in the county;

(17) descriptions of how the coordinated service system will maintain its policies, routes, schedules, fare structures and budget in a manner that encourages public review, responsiveness to user concerns, energy conservation and fiscal solvency;

(18) a pre-established basis for determining success using a specified means of performance measurement; a detailed budget of the resources available and the assistance necessary for implementation;

(19) a demonstration of the potential for enhancement of services to be derived from a coordinated public transportation service program, and the manner in which the program will promote more economical, comprehensive or efficient service to the general public and transportation disadvantaged populations;

(20) a description of the manner in which the elements of the coordinated public transportation service program are to be consolidated into a single management unit and the extent to which that unit will coordinate with any remaining non-public transportation services;

(21) a description of the manner in which the subsequent two-year grants are to be utilized in the implementation of the plan, including an itemized preliminary budget as described in section seventy-three-j of this article.

b. The services coordinator shall submit to the county legislature a draft coordinated public transportation service plan in accordance with program guidelines promulgated by the commissioner.

c. The county legislature shall, upon the giving of at least ten days notice, hold a public hearing on the draft plan after which, it may make such modifications as it deems appropriate.

d. As a condition of the submittal of the plan to the department, the county legislature shall adopt the plan, which it shall then submit to the commissioner. After approval by the commissioner of the plan, the county legislature may make such organizational changes as may be necessary for implementation of the plan.

5. A second year grant may be authorized by the commissioner upon acceptance of the plan, completed in accordance with paragraph a of subdivision three of this section, and upon the appropriation by the county of an amount equivalent to at least twenty percent of such grant. The second year grant shall be utilized for implementation of the plan, including management expenses, and the cost of expanded operational services as well as for the purchase of equipment, other than vehicles, which will enhance delivery of a coordinated public transportation service.

6. A third year grant may be authorized by the commissioner upon the appropriation by the county of an amount equivalent to at least thirty percent of the grant. The third year grant may be utilized for any eligible costs necessary for the development and implementation of a coordinated public transportation service other than operating expenses of services that were performed prior to the implementation of a coordinated public transportation service; vehicles, other than those being purchased through other programs, may be purchased with a third-year grant.

7. Any rural county or public transportation authority providing transportation services in a rural county which has already established and operates a countywide public transportation system, but does not offer a coordinated public transportation service as defined in this article, shall be eligible for not more than two years of financial aid, subject to annual appropriation in the state budget, for the purpose of developing and implementing a more fully coordinated public transportation service.

8. Any rural county which has previously initiated and is currently undertaking activities leading to the development of a coordinated public transportation services plan utilizing federal funds administered

by, and pursuant to guidelines issued by the commissioner, shall be eligible to receive a total of federal and state financial assistance up to the limit prescribed herein.

§ 73-h. Operating aid. 1. For those rural counties having an approved and implemented coordinated public transportation service plan which has maintained existing levels of funding used for transportation by the coordinated service and has documented the need for additional operating aid, the commissioner may, in consultation with the interagency coordinating committee on rural public transportation, grant up to twenty-five thousand dollars per year for operating aid for up to five successive years, subject to annual appropriations to be included in the state budget. Such aid may be extended annually when the county or operator of the coordinated public transportation service has adequately demonstrated the need for such continued aid and that criteria for continuing aid established by rules issued by the commissioner have been met.

2. No such operating aid shall be paid to any rural county unless such county appropriates and expends at least twenty percent of the coordinated public transportation service's total annual administrative and operating costs. Except for other public transportation monies paid by the department to the county, such amount may include any county funds used for operating aid, including funds used to support any other transportation service, that have been appropriated to an account under the management and control of the coordinated public transportation service.

§ 73-j. Special provisions relating to aid. 1. Within one hundred twenty days after the adoption of a state budget containing an appropriation implementing this article, the commissioner shall send to the county executive, if any, or the chairperson of the county legislative body of each rural county, a copy of this article and general information relating to the procedure to be followed to obtain the aid provided for in this article including, but not limited to, the following:

a. the intent of the program;

b. program guidelines, including the time when applications must be submitted; the time when applications will be accepted or rejected; the time when the applicant must complete the program for which aid has been given;

c. potential county benefit, including an indication of the level of the funds to which each county would be entitled should it participate in the program as defined in this article.

2. The failure to file an application for aid in any year shall not impair the right of a rural county to file an application for aid in any subsequent year.

3. Within six months of the time of receipt of any application for aid, pursuant to section seventy-three-g of this article, the commissioner shall notify the applicant that such application was approved and aid shall be paid to such county or the commissioner will reject such application and state the reasons for such rejection. The rejection shall not disqualify an applicant from resubmitting an application for aid. In the event, after consultation with the commissioner, the application is modified it may thereafter be resubmitted for further consideration.

4. Each request submitted to the commissioner for a financial assistance grant under this article shall be accompanied by an itemized preliminary budget, certified by the chief financial officer of the county, identifying expected eligible costs, amounts and sources of grant funding including any applicable county matching funds.

a. Within sixty days after the completion of the grant, as determined by the terms of the grant, the chief executive officer of the county, if any, or the chairperson of the county legislative body shall forward to the commissioner a certified financial statement identifying actual costs incurred, grant funds expended or encumbered, including any applicable county matching funds on forms provided by the commissioner. After the expenditure of any applicable county matching funds, should any state funds paid to a county remain unexpended or unencumbered upon completion of the grant, as determined by the terms of the grant, the commissioner will credit said state funds to the county's planning or operating assistance grant for the subsequent year. In no event, shall the county's subsequent year's grant exceed the sum of forty-five thousand dollars for planning or twenty-five thousand dollars for operating aid.

b. Should a county's activities in coordinated public transportation services be terminated at any time, the chief executive officer of the county, if any, or the chairperson of the county legislative body shall advise the commissioner of such termination in writing and return to the commissioner any unexpended state funds paid to the county together with the final certified financial statement indicating the expenditure of any grant funds received.

5. Except as provided for in section seventy-three-g of this article, any moneys paid to rural counties by the commissioner shall be paid in quarterly installments at the beginning of each quarter, commencing on the first day of January of each year, unless the commissioner approves an alternative method of payment in accordance with subdivision nine of this section.

6. Except as provided for in section seventy-three-g of this article, a rural county's apportionment of funds made available in accordance with this article may be used for capital, operating and or administrative assistance to provide rural public transportation. The commissioner, in consultation with the interagency coordinating committee on rural public transportation, may award other grants for operating and capital expenses.

7. Recipients of aid shall annually submit to the commissioner such data as he or she may deem necessary to review the program and to recommend future funding levels.

8. Following formal adoption of a rural county's coordinated public transportation service plan and approval of that plan by the commissioner, and upon receipt of written notice from a rural county that its coordinated public transportation service is about to commence in accordance with such approved plan, the commissioner shall forward operating aid applications to the chief executive officer of the county, if any, or the chairperson of the county legislative body, along with instructions and a timetable for their completion. The commissioner shall advise the applicant county of his action on each such application within ninety days of its receipt.

9. Funds appropriated for the purpose of implementation of this article may be allocated in whole or in part to a rural county prior to the time actual expenditures are incurred if the payment is first approved by the commissioner. Applications for advance payment shall be made by the county in accordance with rules of the commissioner. Each application shall specifically state why such advance payment is required.

10. The commissioner shall promulgate rules and regulations in order to implement the provisions of this article.

11. When a rural county has adopted and implemented a coordinated public transportation service plan in accordance with rules and regulations issued by the commissioner pursuant to the provisions of this article and such plan has been approved by the commissioner, then the department may, from among all applications within said county for financial aid to purchase vehicles provided by section sixteen (b) (two) of the federal Urban Mass Transportation Act of nineteen hundred sixty-four as amended, give priority consideration for funding to those applications that provide coordinated public transportation service in accordance with the county's plan.

12. When included and operated as an integral part of a coordinated public transportation service plan approved by the commissioner and adopted pursuant to the provisions of this article, and consistent with

the Urban Mass Transportation Act of nineteen hundred sixty-four as amended, vehicles obtained through section sixteen (b) (two) of said federal Urban Mass Transportation Act, may be eligible to carry persons other than elderly and disabled on a regular basis, provided that the transportation needs of elderly and/or disabled persons described in the recipient's original section sixteen (b) (two) grant application are met by the adopted coordinated public transportation service and the transportation needs of other elderly and disabled persons in the rural county are met under the county's adopted plan.

13. Public transportation providers utilizing state or federal transit assistance moneys for the purchase of vehicles pursuant to this article, may purchase said vehicles through state contract or by public bid as required by section one hundred three of the general municipal law.

14. Notwithstanding any other provisions of this article to the contrary, no application for financial assistance made pursuant to section seventy-three-g of this article shall be awarded by the commissioner for less than fifty-five thousand dollars or for less than the amount requested unless the commissioner shall, in writing, prior to making the award, each year certify the reasons why such applicant was awarded less than fifty-five thousand dollars or an amount less than requested. Such certification, including the reasons for such action, shall be sent to the applicant, the interagency coordinating committee on rural public transportation, the secretary of the senate finance committee, the secretary of the assembly ways and means committee, the director of the office of rural affairs and the director of the legislative commission on the development of rural resources.

15. Notwithstanding any other provisions of this article to the contrary, no grant for operating aid, as authorized by section seventy-three-h of this article, shall be made by the commissioner to any county for less than thirty-five thousand dollars in any one year unless the commissioner shall, in writing, prior to making the grant, each year certify the reasons why such county was awarded less than thirty-five thousand dollars. Such certification including the reasons for such action shall be sent to such county, the interagency

coordinating committee on rural public transportation, the secretary of the senate finance committee, the secretary of the assembly ways and means committee, the director of the office of rural affairs and the director of the legislative commission on the development of rural resources.

§ 73-k. Aid for counties operating jointly or cooperatively. In the event two or more counties jointly or cooperatively develop coordinated public transportation services and designate one services coordinator or the same services coordinator, such services coordinator may apply for aid for each rural county as provided by this article and each rural county shall be entitled to such aid to the same extent and in the same manner as any other rural county.

§ 73-l. Aid for counties with transportation authorities. In the event a transportation authority encompasses one or more rural counties, each rural county may make application for aid under this article. Any such aid may be given to such authority provided such aid is used within the rural county to carry out the purposes of this section.

§ 73-m. Contract authority. The department and rural counties are hereby empowered to enter into any agreement or contract with any private or public agencies, corporations or individuals necessary or convenient to carry out the provisions of this article. Funds made available by the department pursuant to this article shall be provided pursuant to the terms of such contracts.

§ 73-n. Cooperation and assistance from other state agencies. The governor shall direct that all state agencies provide the commissioner with assistance in advancing the purposes of this article, and to assure that the activities of the department are fully coordinated with the activities of state agencies providing or contracting for public transportation services. To effectuate the purposes of this article, the commissioner may request and shall be entitled to receive from any state agency, and the same are authorized to provide, such assistance, service, facilities and data as will enable the department to carry out its functions, powers and duties.

§ 73-o. Functions, powers and duties of departments and state agencies. Nothing contained in this article shall be deemed to derogate or detract in any way from the functions, powers or duties prescribed by law of any department of the state or to interrupt or preclude the direct relationship of any such department or agency with local agencies, individuals or corporations for the carrying out of such functions, powers and duties.

§ 73-p. Department report. Commencing December thirty-first, nineteen hundred eighty-seven, the department, in cooperation with the state interagency coordinating committee on rural public transportation, shall prepare and submit to the governor and the legislature a report on or before the first day of January of each year, which shall include information relating to the operation of coordinated public transportation services in rural counties then being funded under this article and any recommendations for overall program improvement; stating the receipts and disbursements made during the preceding fiscal year and adequacy of programs financed by federal, state, local and private aid in rural counties of the state. The department shall analyze the programs financed in accordance with this article and recommend methods of avoiding duplication and increasing the efficacy of programs financed. The department shall receive comments from the officers and agents of affected state and local government units relative to the department's analysis.

ARTICLE 3

JURISDICTION OF COMMISSIONER; PROCEEDINGS BEFORE COMMISSIONER; RECOVERY OF PENALTIES; COURT PREFERENCES; FEES

Section 80. Jurisdiction of commissioner.

§ 80. Jurisdiction of commissioner. 1. The jurisdiction, supervision, powers and duties of the commissioner under this chapter shall extend to common carriers, common and contract carriers of passengers by motor vehicle, and common and contract carriers of property by motor vehicle, and to the persons owning, leasing or operating the same. Such jurisdiction does not extend however to any public authority or any subsidiary thereof exercising any power granted under the public authorities law.

2. A person or persons owning or holding a majority of the stock of any common carrier specified in subdivision one of this section and subject to the jurisdiction of the commissioner shall be subject to the supervision of the commissioner in respect of the relations between such common carrier and such owners or holders of a majority of the stock thereof insofar as such relations arise from or by reason of such ownership or holding of stock thereof or the receipt or holding of any money or property thereof or from or by reason of any contract between them; and in respect of such relations shall in like manner and to the same extent as such common carrier be subject to examination of accounts, records and memoranda and shall furnish such reports and information as the commissioner shall from time to time direct and require and shall be subject to like penalties for default therein.

3. Corporations formed to acquire property or to transact business which would be subject to the provisions of this chapter, and corporations and other persons possessing franchises for any of the purposes contemplated by this chapter, shall be deemed to be subject to the provisions of this chapter although no property may have been acquired, business transacted or franchises exercised.

4. Notwithstanding any other provision of law, the commissioner shall not have jurisdiction over the regulation of any bus line operations that are wholly within the boundaries of any city when such city has adopted an ordinance, local law or charter to regulate or franchise bus line operations, except that the commissioner shall have jurisdiction with respect to safety of operation of motor vehicles and self-insurance requirements of such bus lines. The commissioner shall, however, have exclusive jurisdiction over the regulation of common carriers of passengers by motor vehicle that provide operations on a prearranged basis over non-specified or irregular routes within a city, except as provided in subdivision five of this section or as otherwise provided in this chapter. It is further provided, however, that once the commissioner issues a certificate to a motor carrier to operate as a common carrier of passengers by motor vehicle, such motor carrier shall be under the exclusive jurisdiction of the commissioner with respect to the service performed under such certificate, except as provided in subdivision five of this section.

5. a. (1) Notwithstanding any other provision of law, in any city with a population of over one million, the commissioner shall not have jurisdiction over the regulation of any van service or other common carrier of passengers by motor vehicle covered under article seven of this chapter when such van service or other such common carrier is operated wholly within the boundaries of such city or is operated partly within such city if the partial operation consists of the pick up and discharge of passengers wholly within such city, when such city has adopted an ordinance, local law or charter to regulate or franchise such operations; provided, however, that the commissioner shall have exclusive jurisdiction with respect to the safety of operation of motor

vehicles operated as van services or other such common carriers of passengers, except that concurrent jurisdiction with respect to enforcement of such safety standards may be transferred pursuant to agreement between the department and such city; and provided further that the commissioner shall have exclusive jurisdiction with respect to van services and other such common carriers that are designed for the transport of transportation disabled persons as defined in section fifteen-b of this chapter, except that such city shall continue to have jurisdiction over the licensure of wheelchair accessible vans and drivers of such vans as provided in chapter five of title nineteen of the administrative code of the city of New York; and provided further that the commissioner shall have exclusive jurisdiction with respect to the operations of motor vehicles as van services or other such common carriers of passengers covered under article seven of this chapter to or from an airport in such city when such van services or other such common carriers of passengers have been issued a permit by the port authority of New York and New Jersey to operate at an airport in such city or apply for such permit and within a reasonable period of time are issued such permit by such authority. Such local law or ordinance shall: (i) designate a city agency which will assume the regulatory responsibility, (ii) contain regulations for the issuance of operating authority in accordance with criteria to be established pursuant to such local law or ordinance, which criteria shall include but not be limited to the fitness, willingness and ability of the applicant to provide the transportation to be authorized by the certificate and to comply with the local law or ordinance, and consideration of the present or future public convenience and necessity, and prohibit the operation of any vehicle as a van service or other such common carrier of passengers without such operating authority or without complying with regulations promulgated by the commissioner regarding safety of operations, (iii) make provisions for the continuation of operating authority for van services and other such common carriers of passengers previously approved by the department which are in compliance with such operating authority through the conversion of such operating authority to operating authority issued by the city agency designated by the local law or ordinance adopted pursuant to this subdivision, pursuant to agreement between the department and such city, provided that all such van services and common carriers shall comply with such local law or ordinance within one year of the effective date of such local law or ordinance, (iv) contain adequate regulatory and enforcement mechanisms, (v) provide that such city agency shall, after consultation with the department, render a final administrative determination on any application for the issuance of a permit, certificate or other operating authority within one hundred eighty days after a completed application is filed, provided that the failure to approve or disapprove any completed application by such agency within one hundred eighty days shall be deemed a disapproval of said application, and (vi) provide for the imposition of a fee for such operating authority not to exceed the amount of the license fee for for-hire vehicles established by the commissioner of the agency having jurisdiction over the licensing of for-hire vehicles in accordance with subdivision b of section 19-504 of the administrative code of the city of New York, as amended.

(2) Such local law or ordinance shall prohibit a van service or other such common carrier of passengers, other than van services and other such common carriers that are designed for the transport of transportation disabled persons as defined in section fifteen-b of this chapter and may lawfully engage in such transportation or under the exclusive jurisdiction of the commissioner, from soliciting, picking up or discharging passengers at stops of, or along a route which is traveled upon by, a bus line which is operated by a transit authority or such city or a private bus company approved by such city to operate pursuant to a local law, ordinance or charter provision enacted in accordance with subdivision four of this section; provided, however, that such local law or ordinance shall provide that this prohibition shall not apply to the pick up or discharge of passengers in the borough of Manhattan south of Chambers Street by van services or other such common carriers of passengers with authority from the department as of the first day of July, nineteen hundred ninety-two to pick up or discharge passengers along bus routes in such area, provided further that the scope of operations by such van services or other common carriers of passengers along bus routes in such area shall not exceed the scope of such operations prior to the first day of July, nineteen hundred ninety-two.

(3) Notwithstanding any provision of law to the contrary, such local

law or ordinance may provide for the administrative adjudication of a violation of such local law or ordinance by an agency or an administrative tribunal of an agency heretofore authorized pursuant to the charter of such city to adjudicate violations of local law, rules and regulations pertaining to for-hire vehicles as if it were a violation relating to for-hire vehicles and in accordance with the provisions of such charter pertaining to the adjudication of violations relating to for-hire vehicles. Such local law or ordinance may provide that notices of violation of such local law or ordinance may be served by any police officer, officer or employee designated by the city agency with regulatory responsibility, or authorized officers or employees of the transit authority of such city, and shall be returnable to such agency or administrative tribunal. Such local law or ordinance shall provide that the civil penalty imposed by such agency or administrative tribunal for a first violation relating to a van service or other such common carrier of passengers shall not be more than one thousand dollars, and for a second or subsequent violation within two years of the first violation shall not be more than twenty-five hundred dollars. Judgments based on such adjudications may be entered and enforced without court proceedings in accordance with the provisions of such charter pertaining to the enforcement of judgments relating to for-hire vehicles.

(4) Such local law or ordinance shall provide that where such agency or administrative tribunal finds an owner liable for operating a vehicle as a van service or other such common carrier without the operating authority required by such local law or ordinance, such agency or administrative tribunal may notify the commissioner of motor vehicles of such finding and the commissioner shall thereupon suspend the registration of such vehicle and shall deny any application for the registration of such vehicle or any application for the renewal thereof pursuant to subdivision five-a of section four hundred one of the vehicle and traffic law until such time as such agency or administrative tribunal may give notice that the violation has been corrected to its satisfaction. The procedure on any such suspension shall be the same as in the case of a suspension under the vehicle and traffic law. Operation of any motor vehicle for which the registration has been suspended as herein provided shall constitute a class A misdemeanor.

(5) Such local law or ordinance may provide for the seizure and forfeiture of vehicles that have been operated as a van service or other such common carrier of passengers without the operating authority required by such local law or ordinance, in accordance with the provisions of paragraphs b and c of this subdivision.

b. (1) A local law or ordinance adopted pursuant to paragraph a of this subdivision may provide that any police officer or officer or employee designated by the city agency with regulatory responsibility may, upon service of a notice of violation upon the owner or operator of a vehicle, seize a vehicle which such police officer or authorized officer or employee has reasonable cause to believe is being operated as a van service or other such common carrier of passengers by or on behalf of an individual or entity which is not the holder of operating authority to operate a van service or other such common carrier of passengers. All passengers in any seized vehicle shall be left in or transported to a location which is readily accessible to other means of public transportation. Any vehicle seized pursuant to this paragraph shall be delivered into the custody of the city agency with regulatory responsibility or other appropriate agency of the city. Within one business day after the seizure, notice of such seizure and a copy of the notice of violation shall be mailed to the owner of such vehicle at the address for such owner set forth in the records maintained by the department of motor vehicles, or for vehicles not registered in New York state, such equivalent record in such state of registration.

(2) A hearing to adjudicate the violation underlying the seizure shall be held before the agency or administrative tribunal designated by such local law or ordinance to adjudicate violations of such local law or ordinance within five business days after the date of seizure. Such agency or administrative tribunal shall within one business day of the conclusion of the hearing render a determination as to whether the vehicle has been operated by or on behalf of an individual or entity which is not the holder of operating authority to operate a van service or other such common carrier of passengers. An owner shall be eligible to obtain release of such vehicle prior to such hearing if such owner has not previously been found liable in an administrative or court proceeding for operating a vehicle as a van service or other such common

carrier in violation of a local law or ordinance adopted pursuant to paragraph a of this subdivision, which violation was committed within a five-year period prior to the violation resulting in seizure. The vehicle shall be released to an eligible owner upon the posting of a bond in a form satisfactory to such agency or administrative tribunal in an amount that shall not exceed an amount sufficient to cover the maximum fines or civil penalties which may be imposed for the violation underlying the seizure and all reasonable costs for removal and storage of such vehicle.

(3) Where such agency or administrative tribunal after adjudication of the violation underlying the seizure finds that the vehicle has been operated by or on behalf of an individual or entity which is not the holder of operating authority to operate a van service or other such common carrier of passengers, (i) if the vehicle is not subject to forfeiture pursuant to paragraph c of this subdivision, such agency or administrative tribunal shall release such vehicle to an owner upon payment of the applicable fines and civil penalties and all reasonable removal and storage costs, or (ii) if the vehicle is subject to forfeiture pursuant to paragraph c of this subdivision, such agency or administrative tribunal may release such vehicle to an owner upon payment of the applicable fines and civil penalties and all reasonable removal and storage costs, or may commence a forfeiture action pursuant to paragraph c of this subdivision within ten days after the owner's written demand for such vehicle.

(4) Where such agency or administrative tribunal after adjudication of the violation underlying the seizure finds that the charge of operating without the required operating authority has not been sustained, the vehicle shall be released to the owner.

(5) If an owner or representative of such owner has not sought to reclaim a seized vehicle within thirty days after the mailing of notice to such owner of the final adjudication by such city agency or administrative tribunal of the violation underlying the seizure, such vehicle shall be deemed by such agency or administrative tribunal to be abandoned. Such vehicle shall be disposed of by the city agency with regulatory responsibility or other appropriate agency of the city pursuant to section twelve hundred twenty-four of the vehicle and traffic law; provided, however, that notwithstanding any inconsistent

provision of section twelve hundred twenty-four of such law, if an owner seeks to reclaim such vehicle pursuant to the provisions of section twelve hundred twenty-four of such law, such owner shall be deemed to have made a written demand for such vehicle and such agency or administrative tribunal shall take such action as may be authorized by subparagraph three or four of this paragraph.

c. (1) In addition to the penalties, sanctions and remedies provided for in paragraphs a and b of this subdivision or subdivisions six and seven of section one hundred forty-five of this chapter, a vehicle seized pursuant to paragraph b of this subdivision and all rights, title and interest therein shall be subject to forfeiture to the city in accordance with the procedures set forth in this paragraph upon judicial determination thereof if the owner of such vehicle has been found liable at least two times in an administrative or court proceeding for violating a provision of a local law or ordinance adopted pursuant to paragraph a of this subdivision that prohibits the operation of a vehicle as a van service or other such common carrier of passengers without the operating authority required by such local law or ordinance, both of which violations were committed within a five-year period.

(2) A forfeiture action which is commenced pursuant to this paragraph shall be commenced by filing of a summons with notice or a summons and complaint pursuant to the civil practice law and rules, and such summons with notice or summons and complaint shall be served pursuant to subparagraph three of this paragraph. A vehicle which is the subject of such action shall remain in the custody of the city agency with regulatory responsibility or other appropriate agency of the city pending the final determination of the forfeiture action.

(3) Service of a summons with notice or a summons and complaint shall be made: (i) by personal service pursuant to the civil practice law and rules upon all owners of the vehicle listed in the records maintained by the department of motor vehicles, or for vehicles not registered in New York state, in the records maintained by the state of registration; (ii) by first class mail upon all individuals who have notified such city agency or administrative tribunal that they are an owner of the vehicle; and (iii) by first class mail upon all persons holding a security interest in such vehicle which security interest has been filed with the

department of motor vehicles pursuant to the provisions of title ten of the vehicle and traffic law, at the address set forth in the records of such department, or for vehicles not registered in New York state, all persons holding a security interest in such vehicle which security interest has been filed with such state of registration at the address provided by such state of registration.

(4) Any owner who receives notice of the institution of a forfeiture action who claims an interest in the vehicle subject to forfeiture shall assert a claim for the recovery of the vehicle or satisfaction of the owner's interest in such vehicle by intervening in the forfeiture action in accordance with the civil practice law and rules. Any person with a security interest in such vehicle who receives notice of the institution of the forfeiture action who claims an interest in such vehicle subject to forfeiture shall assert a claim for satisfaction of such person's security interest in such vehicle by intervening in the forfeiture action in accordance with the civil practice law and rules.

(5) No vehicle shall be forfeited under this paragraph, to the extent of the interest of a person who claims an interest in the vehicle, where such person pleads and proves as an affirmative defense that: (i) the use of the vehicle for the conduct that was the basis for a seizure authorized by a local law or ordinance adopted pursuant to paragraph a of this subdivision occurred without the knowledge of such person, or if such person had knowledge of such use, without the consent of such person, and that such person did not knowingly obtain such interest in the vehicle in order to avoid the forfeiture of such vehicle; or (ii) the conduct that was the basis for such seizure was committed by any person other than such person claiming an interest in the vehicle, while such vehicle was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States or any state. For purposes of this subparagraph, where such person claiming an interest in the vehicle had knowledge of the use of the vehicle for the conduct that was the basis for such seizure, such person shall be deemed to have consented to the unlawful conduct unless such person establishes that he or she did all that could reasonably have been done to prevent the use of the vehicle for such unlawful conduct.

(6) The agency of the city having custody of the forfeited vehicle,

after judicial determination of forfeiture, shall, at its discretion, either: (i) retain such vehicle for the official use of the city or, (ii) by public notice of at least twenty days, sell such forfeited vehicle at public sale. The net proceeds of any such sale shall be paid into the general fund of such city.

(7) At any time within six months after the forfeiture, any person claiming an interest in a vehicle which has been forfeited pursuant to this paragraph who was not sent notice of the commencement of the forfeiture action pursuant to subparagraph three of this paragraph or who did not otherwise receive actual notice of the forfeiture action may assert in an action commenced before the justice of the supreme court before whom the forfeiture action was held such claim as could have been asserted in such forfeiture action pursuant to this paragraph. The court may grant the relief sought upon such terms and conditions as it deems reasonable and just if such person claiming an interest in the vehicle establishes that he or she was not sent notice of the commencement of the forfeiture action and was without actual knowledge of the forfeiture action and establishes either of the affirmative defenses set forth in subparagraph five of this paragraph.

(8) In any action commenced pursuant to subparagraph two or seven of this paragraph, where the court awards a sum of money to one or more persons in satisfaction of such person's or persons' interest or interests in the forfeited vehicle, the total amount awarded to satisfy such interest or interests shall not exceed the amount of the net proceeds of the sale of the forfeited vehicle, after deduction of the lawful expenses incurred by the city, including the reasonable costs of removal and storage of the vehicle between the time of seizure and the date of sale.

(9) For purposes of this paragraph, the term "security interest" shall mean a security interest as defined in subdivision k of section two thousand one hundred one of the vehicle and traffic law.

d. For purposes of this subdivision, the term "owner" shall mean an owner as defined in section one hundred twenty-eight and in subdivision three of section three hundred eighty-eight of the vehicle and traffic law.

e. The provisions of this subdivision authorizing penalties, sanctions and remedies shall not be construed to supersede the provisions of subdivisions six and seven of section one hundred forty-five of this chapter but shall be construed to provide penalties, sanctions and remedies in addition to those provided in such subdivisions.

f. Any city with a population of over one million which adopts a local law or ordinance pursuant to this subdivision to regulate van service and other such common carrier operations shall, no later than two years following the effective date of such local law or ordinance, submit a report regarding the regulation of such van services and other such common carriers to the governor, the temporary president of the senate and the speaker of the assembly. Such report shall, to the extent such information is available, include but not be limited to: (i) the estimated number of individuals and entities with proper operating authority to operate a van service and other such common carrier, both prior to the commencement of local regulation and after such two-year period, and the number of vehicles operated by such individuals or entities; (ii) the estimated number of vehicles operated without proper operating authority, both prior to the commencement of local regulation and after such two-year period; (iii) the number of individuals and entities which had applied for operating authority during such two-year period; (iv) the number of applications which had been denied and a breakdown of the reasons for such denials; (v) the number of notices of violations or summonses issued to vehicles pursuant to local law or ordinance during such two-year period, and a breakdown of the dispositions of such violation notices or summonses; (vi) the number of vehicles seized pursuant to local law or ordinance during such two-year period, and a breakdown of the dispositions of such seizures; (vii) the number of vehicles forfeited pursuant to local law or ordinance during such two-year period; (viii) the total amount of fines collected pursuant to such local law or ordinance; and (ix) a description of the manner in which service is being provided to commuters who previously used van services and other such common carriers which had been operating without proper operating authority.

§ 81. Counsel to the commissioner; duties. The commissioner shall appoint an attorney to represent and appear for the people of the state and the commissioner in all actions and proceedings involving any question under this chapter, or within the jurisdiction of the commissioner under the railroad law, or under or in reference to any act or order of the commissioner, in relation to functions and powers possessed by and all obligations and duties transferred to the commissioner from the public service commission and the department of public service by the provisions of this chapter and, if directed to do so by the commissioner, to intervene, if possible, in any action or proceeding in which any such question is involved. The attorney appointed by the commissioner shall have the duty of commencing and prosecuting all actions and proceedings directed or authorized by the commissioner, and to expedite in every way possible final determination of all such actions and proceedings.

§ 82. Certain acts prohibited. Any employee or agent of the commissioner who divulges any confidential fact or information which may come to his knowledge during the course of any inspection or examination of the property, accounts, records or memoranda of any person, corporation or municipality subject to the jurisdiction of the commissioner, except insofar as he may be directed by the commissioner, or by a court or judge, or authorized by law, shall be guilty of a misdemeanor.

§ 83. Reports of commissioner. All proceedings of the commissioner in relation to functions and powers possessed by and all obligations and duties transferred to the commissioner from the public service commission and the department of public service by the provisions of this chapter, and records in his possession relating thereto shall be public records.

§ 84. Practice before the commissioner; immunity of witness. 1. All hearings before the commissioner, or an officer or employee of the department specially authorized to conduct an investigation or hearing, shall be governed by rules to be adopted and prescribed by the commissioner. And in all investigations, inquiries or hearings the commissioner, or an officer or employee of the department specially authorized to conduct an investigation or hearing, shall not be bound by the technical rules of evidence.

2. In any investigation or inquiry by or upon any hearing before the commissioner, or an officer or employee of the department specially authorized to conduct an investigation or hearing, the commissioner, or the officer or employee conducting the investigation or hearing, may confer immunity in accordance with the provisions of section six hundred nineteen-c of the code of criminal procedure.

§ 85. Service and effect of orders; stay.

1. Every order of the commissioner shall be served upon every person or corporation to be affected thereby, either by personal delivery of a copy thereof; or by mailing a copy thereof, in a sealed package with postage prepaid, to the person to be affected thereby or, in the case of a corporation, to any officer or agent thereof upon whom a summons may be served in accordance with the provisions of the civil practice law and rules. Within a time specified in the order of the commissioner every person and corporation upon whom it is served must if so required in the order notify the commissioner, in writing, whether the terms of the order are accepted and will be obeyed and in the case of a corporation such notification shall be signed and acknowledged by a person or officer duly authorized by the corporation to execute such acceptance and agreement. Every order of the commissioner shall take effect at a time therein specified and shall continue in force either for a period which may be designated therein or until changed or abrogated by the commissioner, unless such order be unauthorized by this chapter or any other act or be in violation of law.

2. No order staying or suspending an order of the commissioner fixing any rate, fare or charge or joint rate, fare or charge shall be made by

the supreme court otherwise than upon notice and after hearing; and if the order of the commissioner is suspended, the order suspending the same shall contain a specific finding based upon evidence submitted to the court and identified by reference thereto, that great and irreparable damage would otherwise result to the petitioner and specifying the nature of the damage.

§ 87. Attendance of witnesses and their fees. 1. The commissioner, or an employee of the department duly designated, shall have power to issue subpoenas and subpoenas duces tecum. All subpoenas shall be signed and issued by the commissioner or by an officer or employee of the department specially authorized to conduct an investigation or hearing. The fees of witnesses required to attend before the commissioner, or an officer or employee of the department specially authorized to conduct an investigation or hearing, shall be the same as in the case of a subpoena issued out of a court of record, and paid when the witness is excused from further attendance. Except as is herein provided subpoenas shall be regulated by the civil practice law and rules. Whenever a subpoena is issued at the instance of a complainant, respondent or other party to any proceeding before the commissioner, or an officer or employee of the department specially authorized to conduct an investigation or hearing, the cost of service thereof and the fee of the witness shall be borne by the party at whose instance the witness is summoned.

2. If a person subpoenaed to attend before the commissioner, or an officer or employee of the department specially authorized to conduct an investigation or hearing, fails to obey the command of such subpoena, without reasonable cause, or if a person in attendance shall, without reasonable cause, refuse to be sworn or to be examined or to answer a question or to produce a book or papers, when ordered so to do by the commissioner or an officer or employee of the department specially authorized to conduct an investigation or hearing, or to subscribe and swear to his deposition after it has been correctly reduced to writing, he shall be guilty of a misdemeanor.

§ 88. Certified copies of papers filed to be evidence. Copies of all official documents and orders filed or deposited according to law in the department, or office of the commissioner, certified by the commissioner or by an authorized officer or employee of the department to be true copies of the originals, under the official seal of the department, shall be evidence in like manner as the originals.

§ 89. Rehearing before commissioner. After an order has been made by the commissioner any corporation or person interested therein shall have the right to apply for a rehearing in respect to any matter determined therein, but any such application must be made within thirty days after the service of such order, unless the commissioner for good cause shown shall otherwise direct; and the commissioner shall grant and hold such a rehearing if in his judgment sufficient reason therefor be made to appear. The decision of the commissioner granting or refusing the application for a rehearing shall be made within thirty days after the making of such application. If a rehearing shall be granted, the same shall be determined by the commissioner within thirty days after the same shall be finally submitted. An application for such a rehearing shall not excuse any corporation or person from complying with or obeying any order or any requirement of any order of the commissioner, or operate in any manner to stay or postpone the enforcement thereof except as the commissioner may by order direct. If, after such rehearing and a consideration of the facts, including those arising since the making of the order, the commissioner shall be of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commissioner may abrogate or change the same. An order made after any such rehearing abrogating or changing the original order shall have the same force and effect as an original order but shall not affect any right or the enforcement of any right arising from or by virtue of the original order.

§ 90. Action to recover penalties or forfeitures. An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commissioner under the railroad law may be brought in any court of competent jurisdiction in this state in the name of the people of the state of New York. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order of the commissioner the defendant was actually and in good faith prosecuting a suit, action or proceeding in the courts to set aside such order, the court shall remit the penalties or forfeitures incurred during the pendency of such suit, action or proceeding. All moneys recovered in any such action, together with the costs thereof, shall be paid into the state treasury to the credit of the general fund. Any such action may be compromised or discontinued on application of the commissioner upon such terms as the court shall approve and order. An action may be maintained by the commissioner for the whole or any part of the penalties or forfeitures prescribed in this chapter, and judgment may be rendered for the amount demanded in the complaint, or for any less amount, as justice may require.

§ 91. Court proceedings; preferences. All actions and proceedings under this chapter, and all actions and proceedings commenced or prosecuted by order of the commissioner, and all actions and proceedings to which the commissioner or the people of the state of New York may be parties, and in which any question arises under this chapter, or under the railroad law, or under or concerning any order or action of the commissioner, shall be preferred over all other civil causes except election causes in all courts of the state of New York and shall be heard and determined in preference to all other civil business pending therein excepting election causes, irrespective of position on the calendar. The same preference shall be granted upon application in any action or proceeding in which he may be allowed to intervene.

§ 92. Registration. It is unlawful for any motor carrier or any other person subject to the registration requirements of the Unified Carrier Registration System established by section 13908 of title 49 of the United States Code to use any of the public highways of this state for the transportation of passengers or property in interstate commerce or foreign commerce unless such motor carrier or person has registered with the United States Department of Transportation under such Unified Carrier Registration System in accordance with the provision of the federal "Unified Carrier Registration Act of 2005", as amended or supplemented, and the regulations of the Federal Motor Carrier Safety Administration adopted thereunder and such regulations promulgated by the commissioner regarding the same.

§ 93. Registration of motor vehicles. It is unlawful for any person or corporation that is required to have operating authority from the Federal Motor Carrier Safety Administration or the department to transport property or passengers by motor vehicle and to engage in such transportation over the streets and highways of this state, whether it be in intrastate, interstate or foreign commerce, unless each vehicle or vehicles utilized in such transportation are first registered with the department and such vehicle or vehicles carry appropriate identification evidencing such registration in accordance with rules and regulations promulgated by the commissioner.

§ 94. Assessment to defray operating expenses of the department. 1. For the fiscal year commencing on April first, nineteen hundred eighty-three and for each fiscal year thereafter, the expenses of the department for administering and enforcing motor carrier safety and economic regulation pursuant to articles six, seven, eight and nine of this chapter, exclusive of those expenses related to the safety inspection of vehicles, shall be assessed by the commissioner in the form of a fee for the registration of interstate operation pursuant to section ninety-two of this article and an annual vehicle regulatory fee imposed upon all motor vehicles required to be registered under section ninety-three of this article.

2. The annual vehicle registration fee referred to in subdivision one of this section shall be established and levied by the commissioner subject to the approval of the director of the division of the budget in an amount that is sufficient to raise funds to defray the expenses of the department in administering and enforcing motor carrier safety and economic regulation pursuant to articles six, seven, eight and nine of this chapter exclusive of those expenses related to the safety inspection of vehicles. Such expenses shall consist of the direct costs of personal service, the cost of maintenance and operation, retirement contributions, workers' compensation premiums, and health and dental premiums which are paid by the state for or on account of personnel involved in motor carrier regulation and any other direct costs involved in administering and enforcing motor carrier regulations as deemed appropriate by the commissioner. The commissioner may promulgate any rules and regulations necessary to establish and administer the annual vehicle registration fee except that in case of interstate carriers the annual vehicle registration fee shall not exceed the limit established by federal law or regulation for interstate carriers.

3. With respect to the annual vehicle registration fee imposed by this section, the commissioner is authorized to enter into reciprocity agreements or compacts with other state and provincial jurisdictions exempting vehicles domiciled in such other state or provincial jurisdiction from the annual vehicle registration fee to the extent that such state or provincial jurisdiction agrees to exempt vehicles domiciled in this state from similar fees.

ARTICLE 4

PROVISIONS RELATING TO COMMON CARRIERS

§ 95. Application of article. The provisions of this article shall apply to the transportation of passengers or property from one point to another within the state of New York, and to any common carrier performing such service.

§ 96. Safe and adequate service; just and reasonable charges. Every corporation, person or common carrier performing a service designated in the preceding section, shall furnish, with respect thereto, such service and facilities as shall be safe and adequate and in all respects just and reasonable. All charges made or demanded by any such corporation, person or common carrier for the transportation of passengers or property or for any service rendered or to be rendered in connection therewith shall be just and reasonable and not more than allowed by law or by order of the commissioner and made as authorized by this chapter.

Every unjust or unreasonable charge made or demanded for any such service or transportation of passengers or property or in connection therewith or in excess of that allowed by law or by order of the commissioner is prohibited.

§ 97. Switch and side-track connections; powers of commissioner. 1. A railroad company upon the application of any shipper tendering traffic for transportation, shall construct, maintain and operate upon reasonable terms a switch connection or connections with a lateral line of railroad or private side-track owned, operated or controlled by such shipper, and shall, upon the application of any shipper, provide upon its own property a side-track and switch connection with its line of railroad, whenever such side-track and switch connection is reasonably practicable, can be put in with safety and the business therefor is sufficient to justify the same.

2. If any railroad company shall fail to install or operate any such switch connection with a lateral line of railroad or any such side-track and switch connection as aforesaid, after written application therefor has been made to it, any corporation or person interested may present the facts to the commissioner by written petition, and the commissioner shall investigate the matter stated in such petition, and give such hearing thereon as he may deem necessary or proper. If the commissioner finds that it is safe and practicable to have a connection, substantially as prayed for, established or maintained, and that the business to be done thereon justifies the construction and maintenance thereof, he shall make an order directing the construction and establishment thereof, specifying the reasonable compensation to be paid for the construction, establishment and maintenance thereof, and may in like manner upon the application of the railroad company order the discontinuance of such switch connection.

3. The commissioner shall have power, where in his judgment it is reasonably necessary, to make delivery to, or complete delivery by a railroad company to require such railroad company to operate upon the property of another a switch or side-track, and construct and maintain a

proper connection thereto, with its line of railroad. Whenever the shipper and the carrier shall be unable to agree as to the terms of agreements respecting such switches or side-tracks, whether on the property of the railroad company or of another, and such connections, made between a railroad company and the owner or occupant of any premises served or to be served by such switch, or side-track, or connection, the same shall be subject to the approval of the commissioner.

§ 97-a. Rules and instructions for flag protection for stopped railroad trains. 1. Every railroad company shall, within thirty days enactment hereof, promulgate appropriate operating rules and special instructions for employees in conformity with the following:

(a) When a train stops under circumstances in which it may be overtaken by another train, a member of the crew must provide flagging protection, that is, go back immediately with a red flag, torpedoes and fusees by day and with a red and/or white light, torpedoes and fusees by night, a sufficient distance to insure full protection, placing two torpedoes on the rail and when necessary, in addition, display lighted fusees.

(b) When recalled and safety to the train will permit, he may return.

(c) When conditions require, he will leave the torpedoes and a lighted fusee.

(d) The front of the train must be protected in the same way, when necessary, by a member of the crew.

(e) When a train is moving under circumstances in which it may be overtaken by another train, a member of the crew must take such action as may be necessary to insure full protection. By night (or by day, when the view is obscured) lighted fusees must be dropped off the moving train or displayed at proper intervals.

(f) When day signals cannot be plainly seen, owing to weather or other conditions, night signals must also be used.

(g) Conductors and enginemen are responsible for the protection of their trains.

(h) When a pusher engine is assisting a train, coupled behind the cabin or caboose car, and the member of the crew who protects the rear-end of the train is riding in the cabin or caboose car, the requirements as to the fusees will be met by dropping them off between the cabin or caboose car and pusher engine on the track the train is using, and not between that track and an adjacent track. Provided, however, that unless specific circumstances indicate to the contrary, it will be presumed that trains stopping under the following circumstances will not be overtaken by another train:

(i) Passenger trains making normal station stops.

(ii) All trains stopping in manual block territory protected by absolute block.

(iii) All trains stopping so as to be completely within the limits of classication or storage yards at the usual place to change crews or remove power.

2. Nothing in this section shall be deemed to require the employment of additional employees or restrict the use of crew members in any manner.

3. The commissioner shall have full authority to enforce the provisions of this section.

§ 98. Tariff schedules; publication. Every common carrier shall file with the commissioner and shall print and keep open to public inspection schedules showing the rates, fares and charges for the transportation of passengers and property within the state between each point upon its route and all other points thereon; and between each point upon its route and all points upon every route leased, operated or controlled by it; and between each point on its route or upon any route leased, operated or controlled by it and all points upon the route of any other common carrier, whenever a through route and joint rate shall have been established or ordered between any two such points. If no joint rate over a through route has been established, the several carriers in such through route shall file, print and keep open to public inspection, as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid shall plainly state the places between which property and passengers will be carried, and shall also contain the classification of passengers or property in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the commissioner may require to be stated, all privileges or facilities granted or allowed, and any rules or regulations which may in anywise change, affect or determine any part, or the aggregate of, such aforesaid rates, fares and charges, or the value of the service rendered to the passenger, shipper or consignee. Such schedules shall be plainly printed in large type, and a copy thereof shall be kept by every such carrier readily accessible to and for convenient inspection by the public in every station or office of such carrier where passengers or property are respectively received for transportation, when such station or office is in charge of an agent, and in every station or office of such carrier where passenger tickets for transportation or tickets covering sleeping or parlor car or other train accommodation are sold or bills of lading or receipts for property are issued. All or any of such schedules kept as aforesaid shall be immediately produced by such carrier for inspection upon the demand of any person. A notice printed in bold type and stating that such schedules are on file with the agent and open to inspection by any person and that the agent will assist any such person to determine from such schedules any transportation rates or fares or rules or regulations which are in force shall be kept posted by the carrier in two public and conspicuous places in every such station or office. The form of every such schedule shall be prescribed by the commissioner and shall conform in the case of railroad company as nearly as may be to the form of schedule required by the United States department of transportation under the act of congress entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven and the acts amendatory thereof and supplementary thereto. The commissioner shall have power, from time to time, in his discretion, to determine and prescribe by order such changes in the form of such schedules as may be found expedient, and to modify the requirements of this section in respect to publishing, posting and filing of schedules either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

§ 99. Changes in fares and charges; notice required; power of suspension by the commissioner. 1. Unless the commissioner otherwise orders, no change shall be made in any rate, fare or charge, or joint rate, fare or charge, which shall have been filed and published by a common carrier in compliance with this chapter, except after thirty days' notice to the commissioner and publication for thirty days as required by section ninety-eight, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rate, fare or charge will go into effect; and all proposed changes shall be shown by printing, filing and publishing new schedules or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. The commissioner, for good cause shown, may allow changes in rates without requiring the thirty days' notice and publication herein provided for, by duly filing and publishing in such manner as he may direct an order specifying the change so made and the time when it shall take effect; all such changes shall be immediately indicated upon its schedules by the common carrier. Whenever there shall be filed with the commissioner by any common carrier any schedule stating a new individual or joint rate, fare or charge, or any new individual or joint classification or any new individual or joint regulation or practice affecting any rate, fare or charge, the commissioner shall have and he is hereby given authority, either upon complaint or upon his own initiative without complaint, at once, and if he so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, charge, fare, classification, regulation or practice; and pending such hearing and decision thereon, the commissioner upon filing with such schedule, and delivering to the carrier or carriers affected thereby, a statement in writing of his reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, fare, charge, classification, regulation or practice would otherwise go into effect; and after full hearing whether completed before or after the rate, fare, charge, classification, regulation or practice goes into effect, the commissioner may make such order in reference to such rate, fare, charge, classification, regulation or practice, as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation or practice had become effective. Provided, that if any such hearing cannot be concluded within the period of suspension, as above stated, the commissioner may, in his discretion, extend the time of suspension for a further period not exceeding six months. The commissioner may as authorized by subdivision one of section one hundred nineteen establish temporary rates for any period of suspension under this section. At any hearing involving a rate, the burden of proof to show that the change in rate if proposed by the common carrier, or that the existing rate, if on motion of the commissioner or in a complaint filed with the commissioner it is proposed to reduce the rate, is just and reasonable shall be upon the common carrier; and the commissioner may give to the hearing and decision of such questions preference over all other questions pending before him and decide the same as speedily as possible.

§ 100. Concurrence in joint tariffs. The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the commissioner such evidence of concurrence therein or acceptance thereof as may be required or approved by the commissioner; and where such evidence of concurrence or acceptance is filed, it shall not be necessary for the carriers filing the same also to file copies of the tariffs in which they are named as parties.

§ 101. Unjust discrimination. No common carrier shall, directly or indirectly, by any special rate, rebate, drawback, or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered in the transportation of passengers or property, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service in the transportation of a like kind of traffic under the same or substantially similar circumstances and conditions.

§ 102. Unreasonable preference. No common carrier shall make or give any undue or unreasonable preference or advantage to any person or corporation or to any locality or to any particular description of traffic in any respect whatsoever, or subject any particular person or corporation or locality or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

§ 103. Transportation prohibited until publication of schedules; rates as fixed to be charged; passes prohibited. 1. No common carrier subject to the provisions of this chapter shall engage or participate in the transportation of passengers or property, between points within the state, until its schedules of rates, fares and charges shall have been filed and published in accordance with the provisions of this chapter. No common carrier shall charge, demand, collect or receive a greater or less or different compensation for transportation of passengers or property, or for any service in connection therewith, than the rates, fares and charges applicable to such transportation as specified in its schedules filed and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property except such as are regularly and uniformly extended to all persons and corporations under like circumstances.

2. No common carrier subject to the provisions of this chapter shall, directly or indirectly, issue or give any free ticket, free pass or free transportation for passengers or property between points within this state, except to its officers, employees, agents, surgeons, physicians, attorneys-at-law, and their families; to ministers of religion, officers and employees of railroad young men's christian associations, incarcerated individuals of hospitals, charitable and eleemosynary institutions and persons exclusively engaged in charitable and eleemosynary work; and to indigent, destitute and homeless persons and

to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to incarcerated individuals of the national homes or state homes for disabled volunteer soldiers and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge, and boards of managers of such homes; to necessary caretakers of property in transit; to employees of sleeping-car companies, express companies, telegraph and telephone companies doing business along the line of the issuing carrier; to railway mail service employees, post-office inspectors, mail carriers in uniform, customs inspectors and immigration inspectors; to newspaper carriers on trains, baggage agents, witnesses attending any legal investigation or proceeding in which the common carrier is interested, persons injured in accidents or wrecks and physicians and nurses attending such persons; to the carriage free or at reduced rates of persons or property for the United States, state or municipal governments, or of property to or from fairs and expositions for exhibit thereat.

3. Nothing in this chapter shall be construed to prohibit the interchange of free or reduced transportation between common carriers of or for their officers, agents, employees, attorneys, surgeons, and their families, and their household and personal effects nor to prohibit any common carrier from carrying passengers or property free, with the object of providing relief in cases of general epidemic, pestilence or other calamitous visitation; not to prohibit any common carrier from transporting persons or property as incident to or connected with contracts for construction, operation or maintenance, and to the extent only that such free transportation is provided for in the contract for such work, nor to prevent any common carrier from transporting children under five years of age free. Provided further, that nothing in this chapter shall prevent the issuance of mileage, excursion, school or family commutation, commutation passenger tickets, half fare tickets for the transportation of children under twelve years of age, any form of reduced rate passenger tickets for persons attending schools or educational institutions pursuant to title two of the "Servicemen's Readjustment Act of 1944," or any other form of reduced rate passenger tickets, or joint interchangeable mileage tickets, with special

privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand miles or more. But before any common carrier subject to the provisions of this chapter shall issue any such mileage, excursion, school or family commutation, commutation, half fare, or any other form of reduced rate passenger tickets, or joint interchangeable mileage ticket, with special privileges as aforesaid, it shall file with the commissioner copies of the tariffs of rates, fares or charges on which such tickets are to be based, together with the specifications of the amount of free baggage permitted to be carried under such joint interchangeable mileage ticket, in the same manner as common carriers are required to do with regard to other rates by this chapter. Nor shall anything in this chapter prevent the issuance of passenger transportation in exchange for advertising space in newspapers at full rates. The term "employees" as used in subdivisions two and three, when referring to employees of a common carrier, shall include furloughed, pensioned and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term "families" as used in such subdivisions shall include the families of those persons named in this proviso, also the families of persons killed, and the unremarried widow or widower and minor children during minority of persons who died, while in the service of such common carrier.

4. Nothing in this section or in any other provision of law shall limit the power of the commissioner to require the sale of, and upon investigation prescribe reasonable and just fares as the maximum to be charged for, commutation, school or family commutation, mileage tickets over railroads or street railroads, joint interchangeable mileage tickets, round trip excursion tickets, or any other form of reduced rate passenger tickets over such railroads or street railroads, including cummutation, mileage, school tickets or any form of reduced rate tickets issued to persons attending schools or educational institutions pursuant to title two of the "Servicemen's Readjustment Act of 1944"; provided that all special round trip excursion tickets, the sale of which is limited to less than thirty days, except round trip excursion tickets to

the state fair and return during the holding thereof, shall be deemed exempt from such regulation by the commissioner.

§ 104. Free transportation on municipal ferries of soldiers, sailors and marines in uniform. A ferry owned or operated by a municipality between points wholly within the state of New York shall carry without charge or fee of any kind for transportation between such points any soldier, sailor or marine in uniform during their term of enlistment in the service of the state or the United States.

§ 105. False billing by carrier or shipper. No common carrier or any officer or agent thereof or any person acting for or employed by it, shall assist, suffer or permit any person or corporation to obtain transportation for any passenger or property between points within this state at less than the rates then established and in force in accordance with the schedules filed and published in accordance with the provisions of this chapter, by means of false billing, false classification, false weight or weighing, or false report of weight, or by any other device or means. No person, corporation or any officer, agent or employee of a corporation, who shall deliver property for transportation within the state to a common carrier, shall seek to obtain such transportation for such property at less than the rates then established and in force therefor, as aforesaid, by false billing, false or incorrect classification, false weight or weighing, false representation of the contents of a package, or false report or statement of weight, or by any other device or means, whether with or without the consent or connivance of the common carrier, or any of its officers, agents or employees. No person shall obtain transportation for himself or others or shall avail himself or others of any means of transportation at rates other than or different from those prescribed in the schedules of rates filed and published, or in violation of the conditions attached to any reduced rate ticket, provided such conditions are contained in the filed and published schedules. Nothing in this section shall limit, modify or change the provisions of section one hundred three and section one hundred four.

§ 105-a. Immunity from civil liability for employees of public transportation authorities who render assistance to victims of crime. Notwithstanding any provision of law to the contrary, any employee of a public transportation authority who renders assistance to a person who is a victim of a crime being committed on any facility of such authority shall have immunity from civil liability for damages for injuries or death arising out of such act of assistance, unless it is established that such injuries were or such death was caused by gross negligence on the part of such employee.

§ 106. Discrimination prohibited; connecting lines. Every common carrier shall afford all reasonable, proper and equal facilities for the interchange of passenger and property traffic between the lines owned, operated, controlled or leased by it and the lines of every other common carrier, and for the prompt transfer of passengers and for the prompt receipt and forwarding of property to and from its said lines; and no common carrier shall in any manner discriminate in respect to rates, fares or charges or in respect to any service or in respect to any charges or facilities for any such transfer in receiving or forwarding between any two or more other common carriers or between passengers or property destined to points upon the lines of any two or more other common carriers or in any respect with reference to passengers or property transferred or received from any two or more other common carriers. This section shall not require a common carrier to permit or allow any other common carrier to use its tracks or terminal facilities. Every common carrier shall receive from every other common carrier, at a connecting point, freight cars of proper standard, and haul the same through to destination, if the destination be upon a line owned, operated or controlled by such common carrier, and such service shall not be construed as requiring a common carrier to permit or allow any other common carrier to use its tracks or terminal facilities; or if the destination be upon a line of some other common carrier, to haul any car so delivered through to the connecting point upon the line owned, operated, controlled or leased by it, by way of route over which such car is billed, and there to deliver the same to the next connecting carrier. Nothing in this section shall be construed as limiting or modifying the duty of a common carrier to establish joint rates, fares and charges for the transportation of passengers and property over the lines owned, operated, controlled and leased by it and the lines of other common carriers, nor limiting or modifying the power of the commissioner to require the establishment of such joint rates, fares and charges. A railroad company and a street railroad company shall not be required to interchange cars except on such terms and conditions as the commissioner may direct.

§ 107. Long and short hauls. It shall be unlawful for any common carrier subject to the provisions of this chapter to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this chapter; but this shall not be construed as authorizing any common carrier to charge or receive as great compensation for a shorter as for a longer distance; provided, however, that upon application to the commissioner such common carrier may in special cases, after investigation, be authorized by the commissioner to charge less for longer than for the shorter distances for the transportation of passengers or property; and the commissioner may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section. Provided further, that any such carrier or carriers operating over a circuitous line or route may, subject only to the standards of lawfulness set forth in this chapter and without further authorization, meet the charges of such carrier or carriers of the same type operating over a more direct line or route, to or from the competitive points, provided that rates so established over circuitous routes shall not be evidence on the issue of the compensatory character of rates involved in other proceedings; and provided further, that tariffs proposing rates subject to the provisions of this section requiring the commissioner's authorization may be filed when application is made to the commissioner under the provisions hereof, and in the event such application is approved, the commissioner shall permit such tariffs to become effective upon one day's notice.

Whenever a carrier by railroad in competition with a water route or routes shall reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the commissioner it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.

§ 108. Distribution of cars. 1. Every common carrier engaged in the transportation of property shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor, and offer property for transportation, sufficient and suitable cars for the transportation of such property in car-load lots. Every railroad company and street railroad company shall have sufficient cars and motive power to meet all requirements for the transportation of passengers and property which may reasonably be anticipated, unless relieved therefrom by order of the commissioner. In case, at any particular time, a common carrier has not sufficient cars to meet all requirements for the transportation of property in car-load lots, all cars available to it for such purposes shall be distributed among the several applicants therefor, without discrimination between shippers, localities or competitive or non-competitive points, but preference may always be given in the supply of cars for shipment of live-stock or perishable property.

2. The commissioner shall have power to make, and by order shall make, reasonable regulations for the furnishing and distribution of freight cars to shippers, for the switching of the same, for the loading and unloading thereof, for demurrage charges in respect thereto, and for the weighing of cars and property offered for shipment or transported by any common carrier.

§ 109. Liability for damage to property in transit. Every common carrier shall, upon demand, issue either a receipt or bill of lading for all property delivered to it for transportation. No contract, stipulation or clause in any receipt or bill of lading shall exempt or be held to exempt any common carrier from any liability for loss, damage or injury caused by it to property from the time of its delivery for transportation until the same shall have been received at its destination and a reasonable time shall have elapsed after notice to consignee of such arrival to permit the removal of such property. Every common carrier shall be liable for all loss, damage or injury to property caused by delay in transit due to negligence while the same is being carried by it, but in any action to recover for damages sustained by delay in transit the burden of proof shall be upon the defendant to show that such delay was not due to negligence. Every common carrier shall be liable for loss, damage and injury to property carried as baggage whether in connection with the transportation of the owner or not, up to the full value and regardless of the character thereof, but the value in excess of one hundred and fifty dollars shall be stated upon delivery to the carrier, and a written receipt stating the value shall be issued by the carrier, who may make a reasonable charge for the assumption of such liability in excess of one hundred and fifty dollars and for the carriage of baggage exceeding one hundred and fifty pounds in weight upon a single ticket or receipt. Nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

§ 110. Continuous carriage. No common carrier shall enter into or become a party to any combination, contract, agreement or understanding, written or oral, express or implied, to prevent by any arrangement or by change of arrangement of time schedule, by carriage in different cars or by any other means or device whatsoever the carriage of property from being continuous from the place of shipment to the place of destination. No breakage of bulk, stoppage or interruption of carriage made by any common carrier shall prevent the carriage of property from being treated as one continuous carriage from the place of shipment to the place of destination. Nor shall any such breakage of bulk, stoppage or interruption of carriage be made or permitted by any common carrier except it be done in good faith for a necessary purpose without intention to avoid or unnecessarily interrupt or delay the continuous carriage of such property or to evade any provision of law, or order of the commissioner.

§ 111. Liability for damage. In case a common carrier shall do, cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done, either by law or by order of the commissioner, such common carrier shall be liable to the persons or corporations affected thereby for all loss, damage or injury caused thereby or resulting therefrom, and in case of recovery, if the court shall find that such act or omission was wilful, it may in its discretion fix a reasonable counsel or attorney's fee, which fee shall be taxed and collected as part of the costs in the case. An action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any such person or corporation.

§ 112. Routing of shipments by shipper of goods. In all cases where at the time of the delivery of property to a common carrier, for transportation subject to the provisions of this chapter, to any point of destination, between which and the point of such delivery for shipment two or more through routes shall exist, the person, firm or corporation making such shipment shall have the right to designate in writing by which of such routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route such property and issue a through bill of lading therefor as so directed, and to transport such property over its own line or lines and deliver the same to the connecting carrier by rail or water, and it shall be the duty of such connecting carrier to receive such property and transport it over such line or lines and deliver the same to the next succeeding carrier or consignee according to the routing instructions of such bill of lading, provided that nothing in this section shall be construed to make a common carrier liable for injury to or loss of goods in transit on the line of another carrier. The shipper shall in all instances have the right to determine where competing lines of railroad or of carriers by water constitute portions of a through line or route, over which of said competing lines so constituting a portion of such through line or route his freight shall be transported. The commissioner shall have the power to make such reasonable exceptions and regulations as he may determine and shall have power to enforce the above provisions. Where the route adopted by the shipper is by rail and water lines, some of which have no physical connection, the property carried shall be delivered at the point on the route where the transfer is to take place by the initial or succeeding carrier to an agent of the connecting carrier.

ARTICLE 5

THE POWERS OF THE COMMISSIONER IN RESPECT TO COMMON CARRIERS

§ 115. General powers and duties of commissioner in respect to common carriers. 1. The commissioner shall have power and authority to administer oaths, in all parts of the state, to witnesses summoned to testify in any inquiry, investigation, hearing or proceedings; and also to administer oaths in all parts of the state whenever the exercise of such power is incidentally necessary or proper to enable the commissioner to perform a duty or to exercise a power. An officer or employee of the department specially authorized to conduct an investigation or hearing shall have power to administer oaths to witnesses subpoenaed to testify before him.

2. (a) The commissioner shall have the general supervision of all common carriers subject to his jurisdiction as hereinbefore defined, and shall have power to and shall examine the same and keep informed as to their general condition, their capitalization, their franchises and the manner in which their lines and property, owned, leased, controlled or operated, are managed, conducted and operated, not only with respect to the adequacy, security and accommodation afforded by their service, but also with respect to their compliance with all provisions of law, orders of the commissioner and charter requirements. The commissioner, or responsible engineers or inspectors duly authorized by him, shall have power to enter in or upon and to inspect the property, equipment, buildings, plants, factories, power-houses and offices of any of such companies or persons, including the right for such inspection purpose to ride upon any freight locomotive or train or any passenger locomotive or train while in service; and to have upon reasonable notice the use of an inspection locomotive or special locomotive and inspection car for a physical inspection once annually of all the lines and stations of each

common carrier under his supervision; and to the extent that such facilities for inspection involve transportation the commissioner and each such employee shall pay the published one-way fare established by the common carrier for the transportation of persons by regular passenger trains over the distance covered by such inspection. The cost of such transportation, if the commissioner so elects, may be paid upon bill rendered to the commissioner after the transportation has been furnished and the amount thereof ascertained. The commissioner shall also have general powers and authority with respect to the abatement except by change of motive power of all nuisances arising outside the corporate limits of a city from the generation of smoke, soot, or cinders, incident to the operation of such railroads, and railroad companies.

(b) The commissioner shall promulgate rules and regulations relating to railroad electric power substations which shall provide for safe ingress to and egress from such substations with relation to surrounding areas. Such rules and regulations shall also establish safety guidelines which when implemented will assure that such substations will be maintained under conditions of reasonable security and optimum safety not only for persons authorized for ingress to such substations but also for persons unauthorized for such ingress.

3. The commissioner or officer or employee specially authorized to conduct an investigation or hearing shall have power to examine all books, contracts, records, documents and papers of any person or corporation subject to his supervision, and by subpoena duces tecum to compel production thereof. In lieu of requiring production of originals by subpoena duces tecum, the commissioner may require sworn copies of any such books, records, contracts, documents and papers or parts thereof to be filed with him.

§ 116. Reports of common carriers. Every common carrier shall file an annual report with the commissioner verified by the oath of the president, vice-president, treasurer, secretary, general manager or receiver, if any, of such carrier or by the person required to file the same. The verification shall be made by said official holding office at the time of the filing of the said report, and if not made upon the knowledge of the person verifying the same shall set forth the sources of his information and the grounds of his belief as to any matters not stated to be verified upon his knowledge. The commissioner shall prescribe the form of such reports and the character of the information to be contained therein, and may from time to time make such changes and such additions in regard to form and contents thereof as he may deem proper, and on or before June thirtieth in each year shall furnish a blank form for such annual reports to every such carrier and person. The contents of such report and the form thereof shall conform in the case of railroad companies as nearly as may be to that required of common carriers under the provisions of the act of congress, entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and the acts amendatory thereof and supplementary thereto. The commissioner may require such report to contain information in relation to rates or regulations concerning fares or freights, agreements or contracts affecting the same, so far as such rates or regulations pertain to transportation within the state. When the report of any such carrier or person is defective, or believed to be erroneous, the commissioner shall notify the carrier or person to amend the same within a time prescribed by the commissioner. The originals of the reports, subscribed and sworn to as prescribed by law, shall be preserved in the office of the commissioner. The commissioner may also require such carriers and persons to file periodic reports in the form, covering the period and at the time prescribed by the commissioner. The commissioner may require of any such carrier or person specific answers to questions upon which the commissioner may need information. The annual report required to be filed by a common carrier shall be so filed at the time prescribed by the commissioner or within such extended time as the commissioner shall allow. If such carrier or person shall fail to make and file the annual report within the time above specified or within the time as extended by the commissioner, or shall fail to amend such report within such reasonable time as may be prescribed by the commissioner, or shall fail to make specific answer to any question, or shall fail to make the periodic reports when required by the commissioner as herein provided, within the time and in the form prescribed by the commissioner for the making and filing of any such report or answer, such carrier or person shall forfeit to the state the sum of one hundred dollars for each and every day it shall continue to be in default with respect to such annual report, amendment, answer or periodic report. Such forfeiture shall be recovered in an action brought by the commissioner in the name of the people of the state of New York. The amount recovered in any such action shall be paid into the state treasury and credited to the general fund.

§ 117. Investigation of accidents. The commissioner shall investigate the cause of all accidents on any railroad or street railroad subject to his jurisdiction which result in loss of life or injury to persons or property, and which in his judgment shall require investigation. Every common carrier shall give immediate notice to the commissioner of every accident happening upon any line of railroad or street railroad owned, operated, controlled or leased by it, in such manner as the commissioner may direct.

§ 118. Investigations by commissioner. 1. The commissioner may, of his own motion, investigate or make inquiry, in a manner to be determined by him as to any act or thing done or omitted to be done by any common carrier, subject to his supervision, and the commissioner must make such inquiry in regard to any act or thing done or omitted to be done by any such common carrier in violation of law or an order of the commissioner.

2. Complaints may be made to the commissioner by any person or corporation aggrieved, by petition or complaint in writing setting forth any thing or act done or omitted to be done by any common carrier in violation, or claimed to be in violation, or of the terms and conditions of its franchise or charter or of any order of the commissioner. Upon the presentation of such a complaint the commissioner shall cause a copy thereof to be forwarded to the person or carrier complained of, which may be accompanied by an order, directed to such person or carrier, requiring that the matters complained of be satisfied, or that the charges be answered in writing within a time to be specified by the commissioner. If the person or carrier complained of shall make

reparation for any injury alleged and shall cease to commit, or to permit, the violation of law, franchise or order charged in the complaint, and shall notify the commissioner of that fact before the time allowed for answer, the commissioner need take no further action upon the charges. If, however, the charges contained in such petition be not thus satisfied, and it shall appear to the commissioner that there are reasonable grounds therefor, he shall investigate such charges in such manner and by such means as he shall deem proper, and take such action within his powers as the facts justify.

3. Whenever the commissioner shall investigate any matter complained of by any person or corporation aggrieved by any act or omission of a common carrier under this section it shall be his duty to make and file an order either dismissing the petition or complaint or directing the common carrier complained of to satisfy the cause of complaint in whole or to the extent which the commissioner may specify and require.

§ 119. Rates and service to be fixed by the commissioner. 1. Whenever the commissioner shall find, after a hearing had upon his own motion or upon a complaint, that the rates, fares or charges demanded, exacted, charged or collected by any common carrier subject to his jurisdiction for the transportation of persons or property within the state, or that the regulations or practices of such common carrier affecting such rates are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in violation of law, or that the maximum rates, fares or charges, chargeable by any such common carrier are insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable, the commissioner shall with due regard among other things to the estimated prospective earning capacity of such property at the rate of fare at the time fixed and existent and to a reasonable average return upon the value of the property actually used in the public service, and to the necessity of making reservation out of income for surplus and contingencies, determine the just and reasonable rates, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be performed, notwithstanding that a higher rate, fare or charge has been heretofore authorized by general or special statute, and shall fix the same by order to be served upon all common carriers by whom such rates, fares and charges are thereafter to be observed.

At any hearing involving a rate, the burden of proof to show that the change in rate if proposed by the common carrier, or that the existing rate, if on motion of the commissioner or in a complaint filed with the commissioner it is proposed to reduce the rate, is just and reasonable shall be upon the common carrier; and the commissioner may give to the hearing and decision of such questions preference over all other questions pending before him and decide the same as speedily as possible.

Whenever the commissioner shall find, after a hearing had upon his own motion, or upon a complaint, that the rates, fares or charges demanded, exacted, charged or collected by any common carrier subject to his jurisdiction for excursion, school or family commutation, commutation passenger tickets, half fare tickets for the transportation of children under six years of age, or any other form of reduced rate tickets for the transportation of persons within the state, or joint interchangeable mileage tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand miles or more within the state, or that the regulations or practices of such common carriers affecting such rates are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in violation of law, or that the maximum rates, fares or charges collected or charged for any of such forms of reduced fare passenger transportation tickets by any such common carrier are insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable, and whenever the commissioner shall find, after a hearing had upon his own motion or upon a complaint, and upon investigation, that the sale of any form or forms of reduced passenger ticket heretofore sold or used upon any railroad or street railroad within the state, the use or sale of which ticket or tickets has been discontinued within five years prior to June thirtieth, nineteen hundred and eleven, will be just and reasonable and not in violation of any provision of this chapter or other provision of law, the commissioner shall, with due regard, among other things, to a reasonable average return upon the value of the property actually used in the public service and to the necessity of making reservation out of income for surplus and contingencies, determine the just and reasonable rates, fares and charges to be thereafter observed and enforced as the maximum to be charged for such mileage, excursion, school or family commutation, commutation, half fare or any other form of reduced rate tickets for the transportation of persons, or joint interchangeable mileage tickets with special privileges as aforesaid, and shall order the sale and use thereof to be restored, or any of the kinds of tickets herein specified or any other form of reduced rate ticket for the transportation of persons within the state, upon any railroad or street railroad within this state, upon which railroad or street railroad any such form of ticket or tickets for the transportation of persons within the state, have, within five years prior to June thirtieth, nineteen hundred and eleven, been sold or used, and shall determine and prescribe the reasonable and just rates, fares and charges to be thereafter observed and enforced as the maximum to be charged for any of such form of ticket or tickets for the transportation of persons within the state, all of which acts fixing such rates, fares and charges or requiring the restoration of, sale and use of any of such forms of ticket or tickets, shall be by order to be served upon all common carriers, railroad companies and street railroad companies by whom such rates, fares and charges or restoration of, sale or use of such ticket or tickets are thereafter to be observed.

2. Whenever the commissioner shall find, after a hearing, had upon his own motion or upon complaint, that the regulations, practices, equipment, appliances, or service of any such common carrier in respect to transportation of persons or property within the state are unjust, unreasonable, unsafe, improper or inadequate, the commissioner shall determine the just, reasonable, safe, adequate and proper regulations, practices, equipment, appliances and service thereafter to be in force, to be observed and to be used in such transportation of persons and property and so fix and prescribe the same by order to be served upon every common carrier to be bound thereby; and thereafter every common carrier shall observe and obey each and every requirement of every such order so served upon it, and do everything necessary or proper in order

to secure absolute compliance with and observance of every such order by all of its officers, agents and employees.

3. The commissioner shall have power by order to require any two or more common carriers whose lines, owned, operated, controlled or leased, form a continuous or connecting line of transportation or could be made to do so by the construction and maintenance of switch connection or interchange track at connecting point, or by transfer of property or passengers at connecting points, to establish through routes and joint rates, fares and charges for the transportation of passengers and property within the state as the commissioner may, by his order, designate; and in case such through routes and joint rates be not established by the common carriers named in any such order within the time therein specified, the commissioner shall establish just and reasonable rates, fares and charges to be charged, for such through transportation, and declare the portion thereof to which each common carrier, affected thereby shall be entitled and the manner in which the same shall be paid and secured; and the commissioner shall also have power in the same proceeding, or in a separate proceeding involving any rates, fares or charges to prescribe joint rates and fares and charges as the maximum to be exacted for the transportation by them of passengers and property within the state, and to require such common carriers affected thereby to make within a specified time an agreement between them as to the portion of such joint rates, fares or charges to which each of them shall be entitled; and in case such agreement be not so made within the time so specified the commissioner may declare by supplemental order the portion thereof to which each common carrier affected thereby shall be entitled and the manner in which the same shall be paid and secured; such supplemental order shall take effect as part of the original order from the time such supplemental order shall become effective.

All powers of the commissioner to establish through routes and order joint rates, fares and charges as above conferred in relation to common carriers by railroad, shall extend and apply to the establishment of through routes and ordering of joint rates, fares and charges for use and observance by common carriers by railroad and common carriers by water.

When property may be or is transported from point to point in the state of New York by rail and water, the transportation being by a common carrier or carriers, and entirely within such state, the commissioner shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction given by other provisions of this chapter:

(a) To establish physical connection between the lines of the rail carrier and the dock of the water carrier by directing the rail carrier to make suitable connection between its line and a track or tracks which have been constructed from the dock to the limits of its right of way, or by directing either or both the rail and water carrier, individually or in connection with one another, to construct and connect with the lines of the rail carrier a spur track or tracks to the dock. This provision shall only apply where the connection is reasonably practicable, can be made with safety to the public, and where the amount of business existing or prospective is sufficient to justify the outlay.

The commissioner shall have full authority to determine the terms and conditions upon which these connecting tracks, when constructed, shall be operated, and he may either in the construction or the operation of such tracks, determine what sum shall be paid to or by either carrier. The provisions of this paragraph shall extend to cases where the dock is owned by other parties than the carrier involved. The commissioner shall have authority to compel common carriers by rail to make physical connection between their tracks and public terminals established and operated by the state under the provisions of chapter seven hundred and forty-six of the laws of nineteen hundred and eleven, at the expense of such carrier and of the state in such proportions as may be reasonable, where such connection is practicable. The commissioner shall also have authority to compel common carriers by rail to operate upon the railroad tracks within such public terminals by such common carriers' own motive power and servants all rolling stock going to or coming from such public terminals. Common carriers by rail required to make such connections shall file tariffs for all service into and out of such terminals and over the connecting lines of such carriers by rail, if complaint is made by any person that the rates so made are unreasonable, the burden shall be upon the common carrier by rail to establish the reasonableness of such rates. If the rates are found by the commissioner to be unreasonable, the commissioner shall establish reasonable rates. The use and operation of such connections and the spotting, placing and removing of rolling stock shall be in accordance with the regulations prescribed by the commissioner.

(b) To establish through routes and from time to time order maximum joint rates between and over such rail and water lines, and to determine all the terms and conditions under which such a line shall be operated in the handling of the traffic embraced.

(c) To establish maximum proportional rates by rail to and from places to which the traffic is brought, or from which it is taken by the water carrier, and to determine to what traffic and upon what terms and conditions such rates shall apply. By proportional rates are meant those which differ from corresponding local rates to and from the place of receipt and delivery and which apply only to traffic which is brought to the place of receipt and delivery or is carried from that place by a common carrier by water.

(d) If any rail carrier subject to this chapter enters into arrangements with any water carrier operating in the state for the handling of business between interior points in said state, the commissioner may require such carrier to enter into similar arrangements with any or all other common carriers by water operating therein.

(e) No common carrier by rail shall own, lease, operate, control or have any interest whatsoever, by stock ownership or otherwise, either directly or indirectly, through any holding company, or by stockholders or directors in common, or in any other manner, in any common carrier by water, with which said common carrier does or may compete for traffic, or in vessels, boats or barges carrying freight upon any water route with which such common carrier does or may compete for traffic.

Jurisdiction is hereby conferred on the commissioner to determine questions of fact as to the competition or possibility of competition, after full hearing, on the application of any railroad company or other carrier. Such application may be filed for the purpose of determining whether any existing service is in violation of this section and pray for an order permitting the continuance of any vessel or vessels already in operation, or for the purpose of asking an order to install new service not in conflict with the provisions of this paragraph. The commissioner may on his own motion or the application of any shipper institute proceedings to inquire into the operation of any vessel in use by any railroad or other carrier which has not applied to the commissioner and had the question of competition or the possibility of competition determined as herein provided.

(f) The provisions of sections ninety-eight, ninety-nine and one hundred, relating to filing, publication and changes of rates, fares and charges of common carriers shall apply to all rates, fares and charges, and regulations and practices affecting rates, fares and charges for transportation partly by water and partly by railroad, when both the water line and the railroad line are used for a continuous carriage or shipment; but the said section shall not apply to rates, fares or charges, or regulations or practices affecting rates, fares or charges, established by any such common carrier by water for local carriage or shipment of passengers or property between points in this state which are served by such common carrier wholly by water and independently of any railroad service.

The provisions of this chapter, and the powers of the commissioner, relating to the transportation of passengers and property by railroad apply to the transportation of passengers and property partly by railroad and partly by water when both the railroad line and such water line are used for a continuous carriage or shipment between points in this state; and the provisions of this chapter and the powers of the commissioner respecting common carriers by water are hereby limited thereto, except as may be in this section otherwise specifically provided.

4. If the commissioner shall be of the opinion that through cars for the transportation of property should be operated over the tracks of said common carriers and that switch connection or interchange track at a connecting point, if not already existing, should be constructed and maintained by such common carriers, to the end that property may be

carried without change of cars, the commissioner shall have power after a hearing to require by order said common carriers to receive from each other and transport for each other such cars over each other's tracks by way of such switch connection or interchange track, and if no such switch connection or interchange track exist to construct and maintain said switch connection or interchange track, and to make within a specified time not less than thirty days an agreement between them as to the terms of such receipt and transportation of cars, and if so required as to the division of the expense of such construction and maintenance of switch connection or interchange track; and in case such agreement be not so made within the time so specified, the commissioner shall after a hearing declare by supplemental order the terms and conditions upon which such cars shall be received and transported, and if so required the portion of such expense to which each common carrier affected thereby shall be entitled and the manner in which any sums of money to which any such common carrier is entitled shall be paid and secured, and such supplemental order shall take effect as part of the original order from the time such supplemental order shall become effective. Nothing in this subdivision shall require a through route between railroad companies and street railroad companies between points reached by such railroad companies. In case upon the termination of a lease or otherwise the owner or lessor of a rapid transit railroad resumes operation thereof and thereupon such owner or lessor or the lessee discontinues or threatens to discontinue or refuses or threatens to refuse to permit operation over any extension or extensions of such rapid transit railroad or railroads or any of them, or discontinues or threatens to discontinue or refuses or threatens to refuse to permit operation over other railroads on which such lessee had operated under trackage rights, then and in either of those events the commissioner may order that through cars for the transportation of passengers shall be operated over such extension or extensions and over the tracks of such other railroad over which such lessee may have had trackage rights, and the commissioner shall have power, after a hearing to require by order such operating, including the right to order such switch or other connections or interchange tracks as may be necessary, and if so required to determine as to the division of the expense of the maintenance and operation thereof. The commissioner may, after a hearing, prescribe the terms and conditions upon which such operations shall be conducted and the manner in which receipts and expenses shall be apportioned. Pending the hearing or hearings provided for herein, and the determinations and orders of the commissioner thereon, the commissioner shall have power, if in his judgment the public interest requires it, to issue a temporary order requiring said rapid transit railroad companies to receive from each other, and transport for each other, such cars over each other's tracks by way of switch connection or interchange track, and if no such switch connection or interchange track exists, to construct and maintain said switch connection or interchange track; and upon the completion of said hearing or hearings, and the determinations and orders of the commissioner thereafter made, the terms of the receipt and transportation of cars, and the readjustment of compensation and expense involved, shall take effect as of the original date of such temporary order of the commissioner. If upon the expiration or earlier termination of a lease, the free transfer or interchange of passengers, theretofore in effect and permitted by the lessee of a rapid transit railroad at any point or points between the lines of the rapid transit railroads owned or leased and operated by it, is discontinued or is threatened to be discontinued, the commissioner shall have power by order to require the companies, by which the said lines of rapid transit railroads may be operated after the termination of the lease, to continue or re-establish such through routes formerly existing, and to establish joint rates, fares and charges for the transportation of passengers thereon in the manner provided by subdivision three. Pending the hearing or hearings provided for herein, and the determinations and orders of the commissioner thereon, the commissioner shall have power to issue a temporary order requiring the companies then operating said lines of rapid transit railroad to restore the said free transfer or interchange of passengers at the point or points on said rapid transit railroad lines where the said free transfer or interchange was formerly in effect and permitted; and upon the completion of said hearing or hearings, and the determinations and orders of the commissioner thereafter made, the terms and conditions under which the portion of said joint rates, fares and charges to which each company shall be entitled and the manner in which the same shall be paid and secured, shall take effect as of the original date of such temporary order of the commissioner.

§ 120. Power of commissioner to order repairs or changes. If in the judgment of the commissioner, additional tracks, switches, terminals or terminal facilities, stations, motive power, or any other property, construction, apparatus, equipment, facilities or device for use by any common carrier in or in connection with the transportation of passengers or property ought reasonably to be provided or any repairs or improvements to or changes in any thereof in use ought reasonably to be made, or any additions to changes in construction should reasonably be made thereto in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for the transportation of passengers or property, or to overcome or to minimize except by change of motive power nuisances of smoke, soot, or cinders, arising from the operation outside the corporate limits of a city of such common carrier, such changes or additions in equipment not to be in conflict with any federal statute or regulation, the commissioner shall, after a hearing either on his own motion or after complaint, make and serve an order directing such repairs, improvements, changes or additions to be made within a reasonable time and in a manner to be specified therein, and every common carrier shall make all repairs, improvements, changes and additions required of it by any order of the commissioner served upon it. If any repairs, improvements, changes or additions which the commissioner has determined to order require joint action by two or more of said carriers, the commissioner shall, before entry and service of order, notify the said carriers that such repairs, improvements, changes or additions will be required and that the same shall be made at their joint cost, and thereupon the said carriers shall have thirty days or such longer time as the commissioner may grant within which to agree upon the part or division of cost of such repairs, improvements, changes or additions which each shall bear. If at the expiration of such time such carriers shall fail to file with the commissioner a statement that an agreement has been made for a division or apportionment of such repairs, improvements, changes or additions the commissioner shall have authority, after further hearing, to fix in his order the proportion of such cost or expense to be borne by each such company and the manner in which the same shall be paid and secured. But this section shall not be construed to authorize the commissioner to require two or more railroad companies to unite in the erection of a union station.

§ 121. Substitution of motor vehicles or trackless trolleys for cars on tracks; supplemental or extended operation. 1. Whenever the commissioner shall find, after a hearing, had upon the application of any street railroad company or railroad company, that the public interest will be served by the operation of stages, buses, motor vehicles or vehicles known as trackless trolleys, as such trackless trolleys are defined in the vehicle and traffic law, wholly or partly in place of or supplemental to cars or trains upon tracks, on any portion of the route of such railroad, the commissioner may make an order authorizing such whole or partial substitution or such supplemental operation, and thereupon such company shall have the power and privilege and shall be authorized to operate stages, buses, motor vehicles, or trackless trolleys on such portion of its route and if such operation be by trackless trolleys to install and maintain all necessary additional wires paralleling its existing trolley wires on such portion of its route and such other wires and appurtenances as may be necessary for such operation. Such an application or such an order, however, shall not be made unless the local authorities of each city, village or town in which the portion of the route affected is located shall have consented to such substitution or such supplemental operation, by resolution, a certified copy of which shall be presented with the application, which consent may contain such terms and conditions as such local authorities may deem to the best interest of any such city, town or village, and which terms and conditions so contained in such consent may include limitation, reduction or shortening of the period of any franchise or consent under which such street railroad company or railroad company is operating, and also may include, anything in any charter, general, special or local law to the contrary notwithstanding, changes in and modification of the terms and provisions of any franchise or consent under which such street railroad company or railroad company is operating, and of any obligation of such street railroad company or railroad company to any such city, village or town under any such franchise or consent or under any statute, provided, however, that such changes and modifications shall not extend or lengthen the duration of such franchise or consent. If any such portion of the route within a town shall be wholly within an incorporated village, the consent of the board of trustees shall be sufficient, and the consent of the town board shall not be required. If such consent shall require the abandonment of a route or any portion thereof the application to the commissioner shall comply with the provisions of section one hundred eighty-four of the railroad law, and shall require the separate approval by the commissioner of such abandonment. The commissioner may also make an order authorizing any street railroad company or railroad company to operate stages, buses, motor vehicles or trackless trolleys upon streets, highways and public places not included in but forming a route or routes or portion of a route connecting with any part of the route of such railroad or forming deviations or detours therefrom or in connection therewith, provided such company obtains the consent or consents of the local authorities, which consent may be given in like manner and to the same extent as hereinabove provided in respect of the substitution of stages, buses, motor vehicles or vehicles known as trackless trolleys wholly or partly in place of or supplemental to cars or trains upon tracks.

2. Wherever the commissioner has made an order authorizing a substitution as provided in subdivision one, and such substitution is made, the commissioner may on further application by the street railroad company or railroad company, such application to be made in the same manner and subject to the same conditions as provided in subdivision one, revoke such order in whole or in part and make a new order authorizing the operation of stages, buses, motor vehicles or trackless trolleys.

§ 122. Contracts between railroad companies and bus companies owned by former; approval of commissioner. Whenever the commissioner has made an order authorizing any street railroad company or railroad company to substitute the operation of stages, buses or motor vehicles in place of cars or trains upon tracks on any portion of the route of such railroad, and such company is the owner of all of the capital stock of a bus company, such street railroad company or railroad company and such bus company may, subject to the approval of the commissioner, contract for the use of their respective routes, or any part thereof, upon which stages, buses or motor vehicles may be operated, and such routes shall thereafter be used in such manner and for such time as may be prescribed in such contract.

§ 123. Power of commissioner to order changes in time schedules; running of additional cars and trains. If, in the judgment of the commissioner, any railroad company or street railroad company does not run trains enough or cars enough or possess or operate motive power enough, reasonably to accommodate the traffic, passenger and freight, transported by or offered for transportation to it, or does not run its trains or cars with sufficient frequency or at a reasonable or proper time having regard to safety, or does not run any train or trains, car or cars, upon a reasonable time schedule for the run, the commissioner shall, after a hearing either on his own motion or after complaint, have power to make an order directing any such railroad company or street railroad company to increase the number of its trains or of its cars or its motive power or to change the time for starting its trains or cars or to change the time schedule for the run of any train or car or make any other suitable order that the commissioner may determine reasonably necessary to accommodate and transport the traffic, passenger or freight, transported or offered for transportation.

§ 125. Power of commissioner to order continuance of train service during investigation. Unless otherwise ordered or authorized by the commissioner, no railroad company shall discontinue any train engaged in the transportation of passengers in intrastate commerce within the state, except upon thirty days' notice to the commissioner and the posting of notice of such proposed discontinuance in every station directly affected thereby thirty days in advance thereof; nor, unless otherwise ordered or authorized by the commissioner, shall any railroad company discontinue any scheduled station stop by any such train, except upon fifteen days' notice and posting as herein prescribed. Upon receipt of such notice, the commissioner shall have power, upon complaint, or upon his own motion without complaint, to institute an investigation to determine whether the existing service provided by any such train is reasonably required to provide adequate transportation service. Upon the institution of such an investigation, the commissioner is authorized by order to require the railroad company to continue existing service, pending the holding of public hearings and decision thereon, provided that such order shall not be effective for a longer period than ninety days.

§ 126. Uniform system of accounts; access to accounts; forfeitures. The commissioner may, whenever he deems advisable, establish a system of accounts to be used by common carriers which are subject to his supervision, or may classify the said carriers and prescribe a system of accounts for each class, and may prescribe the manner in which such accounts shall be kept. He may also in his discretion prescribe the forms of accounts, records and memoranda to be kept by such carriers, including the accounts, records and memoranda of the movement of traffic as well as the receipts and expenditures of moneys. Notice of alterations by the commissioner in the required method or form of keeping a system of accounts shall be given to such persons or carriers by the commissioner at least six months before the same are to take effect. The system of accounts established by the commissioner and the forms of accounts, records and memoranda prescribed by him as provided above shall conform in the case of railroad companies as nearly as may be to those from time to time established and prescribed by the United States department of transportation under the provisions of the act of congress entitled "An act to regulate commerce" approved February fourth, eighteen hundred eighty-seven, and the acts amendatory thereof or supplementary thereto. The commissioner shall at all times have access to all accounts, records and memoranda kept by common carriers and may designate any officers or employees of the department who shall thereupon have authority under the order of the commissioner to inspect and examine any and all accounts, records and memoranda kept by such carriers. The commissioner may, after hearing, prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited. At any such hearing the burden of proof shall be on the common carrier to establish the correctness of the accounts in which such outlays and receipts have been entered, and the commissioner may suspend a charge or credit pending submission of proof by such carrier. Where the commissioner has prescribed the forms of accounts, records and memoranda to be kept by such carriers it shall be unlawful for them to keep any other accounts, records or memoranda than those so prescribed, or those prescribed by or under authority of the United States.

§ 127. Franchises and privileges. Without first having obtained the permission and approval of the commissioner no common carrier shall begin the construction of a railroad or street railroad, or any extension thereof, for which a certificate of public convenience and necessity shall not have been granted by the board of railroad commissioners or where prior to said time said common carrier shall not have become entitled by virtue of its compliance with the provisions of the railroad law to begin such construction; nor, except as above provided in this section, shall any such common carrier exercise any franchise or right under any provision of the railroad law, or of any other law, not heretofore lawfully exercised, without first having obtained the permission and approval of the commissioner. The commissioner shall have power to grant the permission and approval herein specified whenever he shall after due hearing determine that such construction or such exercise of the franchise or privilege is necessary or convenient for the public service.

§ 128. Transfer of franchises, property or stocks. 1. No franchise nor any right to or under any franchise, to own or operate a railroad or street railroad shall be assigned, transferred or leased, nor shall any contract or agreement with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever, unless the assignment, transfer, lease, contract or agreement shall have been approved by the commissioner. No street railroad company shall transfer or lease its works or system or any part of such works or system to any other person or corporation or contract for the operation of its works and system, without the written consent of the commissioner. The permission and approval of the commissioner to the exercise of a franchise under section one hundred twenty-seven, or to the assignment, transfer or lease of a franchise under this section shall not revive or validate any lapsed or invalid franchise, or to enlarge or add to the powers and privileges contained in the grant of any franchise, or to waive any forfeiture.

2. No railroad company or street railroad company, domestic or foreign, or a corporation which owns or operates a stage, bus or motor vehicle line or route under the jurisdiction of the commissioner, shall hereafter purchase or acquire, take, or hold, any part of the capital stock of any common carrier organized or existing under or by virtue of the laws of this state, unless authorized so to do by the commissioner; and except where stock shall be transferred or held for the purpose of collateral security only with the consent of the commissioner, no stock corporation of any description, domestic or foreign, other than a railroad company, street railroad company, or a corporation which owns or operates a stage, bus or motor vehicle line or route under the jurisdiction of the commissioner, shall purchase or acquire, take, or hold, more than ten per centum of the voting capital stock issued by any common carrier organized or existing under or by virtue of the laws of this state, except that a corporation now lawfully holding a majority of the voting capital stock of any railroad company or street railroad company either directly or through ownership thereof by a subsidiary corporation may with the consent of the commissioner acquire and hold the entire voting capital stock of such railroad company or street railroad company or any portion thereof. Provided, that with the consent of the commissioner and upon and subject to such terms and conditions as the commissioner may fix and impose, any such stock corporation may acquire, take and hold more than ten per centum of the voting capital stock of any common carrier organized or existing under or by virtue of the laws of this state. No consent shall be given by the commissioner to the acquisition of any stock in accordance with this section unless it shall have been shown that such acquisition is in the public interest. Nothing herein contained shall be construed to prevent

the holding of any stock heretofore lawfully acquired or, upon the surrender or exchange of said stock or said stock and bonds or other evidence of indebtedness pursuant to an agreement of consolidation or merger or a reorganization plan, approved by the commissioner, to prevent the purchase, acquisition, taking or holding of the voting capital stock of the new corporation organized pursuant to such agreement or plan to take over the property of any corporation whose stock or whose stock and bonds or other evidences of indebtedness have been thus surrendered or exchanged, or, subject to approval by the commissioner, to prevent the purchase, acquisition, taking or holding of any further issue of stock provided such further issue does not increase the proportion of voting capital stock held by such stock corporation. Every contract, assignment, transfer or agreement for transfer of any stock by or through any person or corporation to any corporation, in violation of this chapter, shall be void and of no effect, and no such transfer or assignment shall be made upon the books of any such railroad company or street railroad company, or shall be recognized as effective for any purpose. The power conferred by this section to approve or disapprove a transaction relating to franchises, rights or stock of any common carrier, shall be exercised by the commissioner.

§ 129. Approval of securities. A common carrier existing, or hereafter incorporated, under or by virtue of the laws of the state of New York, may issue stocks, bonds, notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof, or a receiver of such a corporation, if duly authorized by law, may issue receiver's certificates, when necessary for the acquisition of property, the construction, completion, extension or improvement of its facilities, or for the improvement or maintenance of its service or for the discharge or lawful refunding of its obligations or for the reimbursement of moneys actually expended from income or from any other moneys in the treasury of the corporation not secured by or obtained from the issue of stocks, bonds, notes or other evidences of indebtedness of such corporation, within five years next prior to the filing of an application with the commissioner for the required authorization, for any of the aforesaid purposes except maintenance of service and except replacements in cases where the applicant shall have kept its accounts and vouchers of such expenditure in such manner as to enable the commissioner to ascertain the amount of moneys so expended and the purposes for which such expenditure was made; provided and not otherwise that there shall have been secured from the commissioner an order authorizing such issue, and the amount thereof and stating the purposes to which the issue or proceeds thereof are to be applied, and that, in the opinion of the commissioner, the money, property or labor to be procured or paid for by the issue of such stock, bonds, notes or other evidences of indebtedness is or has been reasonably required for the purposes specified in the order, and that except as otherwise permitted in the order in the case of bonds, notes and other evidences of indebtedness, such purposes are not in whole or in part, reasonably chargeable to operating expenses or to income; but this provision shall not apply to any lawful issue of stock, to the lawful execution and delivery of any mortgage or to the lawful issue of bonds thereunder, which shall have been duly approved by the board of railroad commissioners before July first, nineteen hundred seven. Stock may be issued to stockholders as a stock dividend provided that there shall have been secured from the commissioner an order authorizing such issue and a transfer of surplus to capital in an amount equal to the par or stated value of the stock so authorized and stating that a sum equal to the amount to be so transferred was expended for the purposes enumerated in this section. The issue of stocks, bonds or other evidences of indebtedness, within the meaning of this section, shall include the sale by any such corporation of any such securities previously issued in compliance with this section and subsequently reacquired by such corporation, provided, however, for good cause shown the commissioner may exempt from the restriction hereof stocks, bonds or other evidences of indebtedness. For the purpose of enabling him to determine whether he should issue such an order, the commissioner shall make such inquiry or investigation, hold such hearings and examine such witnesses, books, papers, documents or contracts as he may deem of importance in enabling him to reach a determination. Such corporation shall not without the consent of the commissioner apply said issue or any proceeds thereof to any purpose not specified in such order. Such common carrier may issue notes for proper corporate purposes and not in violation of law, payable at periods of not more than twelve months without such consent but no such notes shall, in whole or in part, directly or indirectly, be refunded, by any issue of stock or bonds or by any evidences of indebtedness running for more than twelve months without the consent of the commissioner. The commissioner shall have power to require every such carrier to file with the commissioner after the issuance of stocks, bonds, notes or other evidences of indebtedness, issued with or without the approval of the commissioner as herein provided, a notice of such transaction in such form as the commissioner may prescribe. Provided, however, that the commissioner shall have no power to authorize the capitalization of any franchise to be a corporation nor to authorize the capitalization of any franchise or the right to own, operate or enjoy any franchise whatsoever in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to a political subdivision thereof as the consideration for the grant of such franchise or right, nor to authorize the issuance of any stocks or other securities for any purposes other than those enumerated in this section; nor shall the capital stock, bonds and other evidences of debt of a corporation formed by the merger or consolidation of two or more other corporations, exceed the sum of the capital stock, bonds and other evidences of debt of the corporations so consolidated, at the par value thereof, or such sum and any additional sum actually paid in cash; nor shall any contract for consolidation or lease be capitalized in the stock of any corporation whatever; nor shall any corporation hereafter issue any bonds against or as a lien upon any contract for consolidation or merger.

§ 130. Reorganizations. 1. Corporate reorganizations of common carriers shall be subject to the approval of the commissioner.

2. Upon all such reorganizations the amount of capitalization, including therein all stocks and bonds and other evidence of indebtedness, shall be such as is authorized by the commissioner which, in making his determination, shall not exceed the fair value of the property involved, taking into consideration its original cost of construction, duplication cost, present condition, earning power at

reasonable rates and all other relevant matters and any additional sum or sums as shall be actually paid in cash, provided, however, that the commissioner may make due allowance for discount of bonds. Any reorganization agreement before it becomes effective shall be amended so that the amount of capitalization shall conform to the amount authorized by the commissioner.

§ 131. Forfeiture; penalties. 1. Every common carrier and all officers, and agents of any common carrier shall obey, observe and comply with every order made by the commissioner so long as the same shall be and remain in force. Any common carrier which shall violate any provision of law requiring the consent, permission or approval of the commissioner for the performance of an act, or which fails, omits or neglects to obey, observe or comply with any order or any direction or requirement of the commissioner, shall forfeit to the people of the state of New York not to exceed the sum of five thousand dollars for each offense; every violation of any such order or direction or requirement, or of law, shall be a separate and distinct offense, and, in case of a continuing violation, every day's continuance thereof shall be a separate and distinct offense.

2. Every officer and agent of any such common carrier who shall violate, or who procures, aids or abets any violation by any such common carrier of any provision of law requiring the consent, permission or approval of the commissioner for the performance of an act, or who shall fail to obey, observe and comply with any order of the commissioner or any provision of an order of the commissioner, or who procures, aids or abets any such common carrier in its failure to obey, observe and comply with any such order or provision, shall be guilty of a misdemeanor.

§ 131-a. Penalties for violations. 1. Any railroad company that operates as a common carrier that violates any provision of article five of this chapter and regulations promulgated pursuant thereto shall, upon direction by the commissioner, be liable for a penalty payable to the people of the state of New York in the amount not to exceed five thousand dollars.

2. Any railroad company that operates as a common carrier of property that violates any provision of article five of this chapter and regulations promulgated pursuant thereto with respect to one or more freight cars required to be placarded by federal hazardous materials regulations shall, upon direction by the commissioner, be liable for a penalty payable to the people of the state of New York in an amount not to exceed fifteen thousand dollars.

3. Each violation shall be a separate and distinct offense, and, in case of a continuing violation, every day's continuance thereof shall be a separate and distinct offense.

4. Before imposing a penalty set forth in this section, the commissioner shall afford the railroad company notice and an opportunity to be heard. In assessing the penalty, the commissioner may consider the following:

a. the railroad company's history of violating the law or the regulations of the commissioner;

b. if the violation arises out of an accident, whether death or serious injury occurred as a result of the accident, whether the accident resulted in an evacuation of the general public for one hour or more, and whether the accident resulted in the closure of a major transportation artery or facility for one hour or more; and

c. any other factors the commissioner deems relevant.

5. If such penalty is not paid within four months, the amount thereof may be entered as a judgment in the office of the clerk of the county of Albany and in any other county in which the railroad company has a place of business or through which it operates.

§ 132. Enforcement proceedings. Whenever the commissioner shall find that a common carrier subject to his supervision is failing or omitting or about to fail or omit to do anything required of it by law or by order of the commissioner, or is doing anything or about to do anything or permitting anything or about to permit anything to be done, in violation of law or of any order of the commissioner, he shall direct an attorney employed by the department to commence an action or special proceeding in the supreme court in the name of the commissioner for the purpose of having such violations or threatened violations stopped and prevented. Such attorney shall thereupon begin an action or special proceeding alleging the violation complained of and praying for appropriate relief. In case of default in answer or after answer, the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct without other or formal pleadings, and without respect to any technical requirement. Such other persons or corporations as the court shall deem necessary or proper to join as parties in order to make its judgment effective, may be joined as parties upon application. The final judgment in any such action or special proceeding shall either dismiss the action or special proceeding or direct judgment as prayed for in the complaint or petition or in such modified or other form as the court may determine will afford appropriate relief.

§ 133. Penalties for other than common carriers. 1. Any corporation, other than a common carrier which shall violate this chapter, or shall fail to obey, observe and comply with every order made by the commissioner under authority of this chapter so long as the same shall be and remain in force, shall forfeit to the people of the state of New York a sum not exceeding one thousand dollars for each offense; every such violation shall be a separate and distinct offense, and the penalty or forfeiture thereof shall be recovered in an action as provided in section ninety.

2. Every person who, either individually or acting as an officer or agent of a corporation other than a common carrier, shall violate this chapter, or fail to obey, observe or comply with any order made by the commissioner under this chapter so long as the same shall be or remain

in force, or who shall procure, aid or abet any such corporation in its violation of this chapter, or in its failure to obey, observe or comply with any such order, shall be guilty of a misdemeanor.

3. In construing and enforcing the provisions of this chapter relating to forfeitures and penalties the act of any director, officer or other person acting for or employed by any common carrier or corporation, acting within the scope of his official duties or employment, shall be in every case and be deemed to be the act of such common carrier or corporation.

§ 134. Duties of commissioner as to interstate traffic. The commissioner may investigate interstate freight or passenger rates or interstate freight or passenger service on railroads within the state, and when such rates are, in the opinion of the commissioner, excessive or discriminatory or are levied or laid in violation of the act of congress entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and the acts amendatory thereof and supplementary thereto, or in conflict with the rulings, orders or regulations of the United States department of transportation, the commissioner may apply by petition to the United States department of transportation for relief or may present to the United States department of transportation all facts coming to his knowledge, as to violations of the rulings, orders, or regulations of that commission or as to violations of the said act to regulate commerce or acts amendatory thereof or supplementary thereto.

§ 135. Rail safety fee. 1. For the fiscal year commencing on April first, nineteen hundred ninety-one and for each fiscal year thereafter, the expenses of the administration and enforcement of the department's railroad safety functions shall be assessed in the form of a fee.

2. The annual fee referred to in subdivision one of this section shall be established and levied by the commissioner, subject to the approval of the director of the division of the budget, in an amount that is

sufficient to raise funds to defray the expenses of the department in administering and enforcing its railroad safety and related duties pursuant to the provisions of this chapter and the railroad law. Such expenses shall consist of the direct costs in the department's rail safety program of personal service, the cost of maintenance and operation, retirement contributions, workers' compensation premiums, and health and dental premiums which are paid by the state for or on account of personnel involved in the department's railroad safety program and any other indirect costs involved in administering and enforcing rail safety as deemed appropriate by the commissioner, provided, however, that such indirect costs shall not exceed twenty percent of total direct costs.

3. The fee shall be assessed against all railroads operating in the state of New York and shall be based on railroad gross operating revenues derived or earned from operations within the state in the preceding calendar year. In instances where railroad gross operating revenues are reported on a system basis and its operations cross state lines, the revenues derived or earned from operations within the state shall be the ratio of revenue freight ton miles operated within the state to total revenue freight ton miles times the total railroad gross operating revenues for freight operations and the ratio of passenger miles travelled within the state to total system passenger miles of routes operating through the state times the total gross operating revenues for passenger operations.

4. Fees will be based on revenues from the preceding calendar year and shall be assessed on or before July first and are payable by September first of each year. On or before January first of each year following assessment of fees pursuant to this section, the commissioner shall report to the railroad companies annual costs associated with this assessment.

5. The department shall annually submit a report by February first of each year to the chairmen of the senate finance and assembly ways and means committees which provides: a listing of department positions funded in part or whole by the rail safety fee established pursuant to

this section; for the current state fiscal year and the next state fiscal year, the dollar amount of total direct costs and the dollar amount of total indirect costs funded or anticipated to be funded by said rail safety fee; and a listing by railroad of the total annual fee assessed, the total annual fee collected to date and the total annual fee anticipated to be collected by the end of the current state fiscal year and during the next state fiscal year. In addition, the commissioner shall include within this report any plans to increase or decrease said rail safety fee and provide an explanation for, and description of the impact of, such increase or decrease in fee amount.

ARTICLE 6

MATTERS RELATING TO ALL MOTOR CARRIERS

§ 136. Application of article. This article shall apply to all motor carriers.

§ 137. Transportation policy. It is hereby declared to be the policy of this state to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in such transportation and among such carriers in the public interest; promote safe, adequate, economical and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of motor carriers and other carriers.

§ 138. General powers of commissioner. The commissioner or a designated employee shall have the following functions, powers and duties:

1. To regulate motor carriers by establishing reasonable requirements with respect to continuous and adequate service, and by establishing reasonable requirements with respect to uniform systems of accounts, records, reports, preservation of records and safety of operation and equipment.

2. To administer, execute and enforce all provisions of this chapter; to make all necessary orders in connection therewith; to prescribe rules, regulations and procedures for such administration; to issue certificates and permits to motor carriers and to attach to any such certificate or permit issued, either at time of issuance or at any time thereafter, any reasonable terms, conditions and limitations as shall be consistent with the public interest.

3. To investigate all motor carriers and keep informed as to the manner in which their property is operated, not only with respect to the adequacy, security, safety and accommodation afforded by their service but also with respect to their compliance with all provisions of law, regulations and orders of the commissioner and to issue such orders in connection therewith as may be required in the public interest.

4. To compel by subpoena duces tecum the production of any accounts, books, contracts, records, documents, memoranda and papers.

5. To subpoena witnesses, take testimony and administer oaths to witnesses in any proceeding or examination instituted or conducted in

reference to any matter under this chapter.

6. To establish reasonable classifications or groups of carriers included in the term motor carrier as the special nature of the services performed by such motor carriers or groups of motor carriers shall require and to establish reasonable rules, regulations and requirements to be observed by the motor carriers so classified or grouped.

7. To investigate the cause of all accidents resulting in loss of life or injury to persons or property, which in the commissioner's judgment shall require investigation.

8. Except as provided in sections one hundred fifty-three and one hundred fifty-four of this chapter, to fix and approve the route or routes of any bus line, except bus lines operating wholly within any city having jurisdiction pursuant to subdivision four of section eighty of this chapter, and from time to time either upon application of the bus company, or upon complaint, or upon the commissioner's own initiative and without complaint, but upon reasonable notice, to modify and amend the route or routes of any such bus company. No such bus company shall operate a bus line or bus lines upon any highway, avenue or street in the state except along a route as fixed and approved by the commissioner, except that in case of street repairs, parades or other temporary obstruction of the highway, the bus company may use during the period of such emergency, another route as close as practicable to the original route. The use of such alternate route during the period of such emergency shall be lawful unless otherwise ordered by the commissioner. Notice of a proposed change in route or routes shall be given to each county and each city, town or village into or through which a proposed route is to pass.

9. To maintain and annually update its website to provide information with regard to each bus operator or motor carrier under subparagraphs (ii) and (vi) of paragraph a of subdivision two of section one hundred forty of this article requiring department operating authority that includes the bus operator's or motor carrier's name, number of inspections, number of out of service orders, operator identification

number, location and region of operation including place of address, percentile to which an operator or motor carrier falls with respect to out of service defects, the number or percentage of out of service defects where pursuant to the commissioner's regulations no inspection certificate shall be issued until the defect is repaired and a re-inspection is conducted, and the number of serious physical injury or fatal crashes involving a for-hire vehicle requiring operating authority pursuant to this article, and a link to access publicly available information on safety fitness standards and motor carrier safety and performance data maintained by the federal motor carrier safety administration of the United States department of transportation pursuant to part three hundred eighty-five of title forty-nine of the code of federal regulations.

10. (a) In consultation and cooperation with the commissioner of motor vehicles, to establish, maintain, monitor, and publicize a toll-free hotline operated and maintained by the department of motor vehicles through which any person may report safety issues with altered motor vehicles commonly referred to as "stretch limousines" having a seating capacity of nine or more passengers, including the driver, used in the business of transporting passengers for compensation. Upon the establishment of such toll-free hotline, the commissioner and the commissioner of motor vehicles shall require every such altered motor vehicle registered in this state to have posted therein a notice providing the department of transportation's safe limo New York website address and toll-free hotline number, in a form and manner approved by the commissioner of motor vehicles. Such notice shall be posted in a manner legible and conspicuous to passengers in all seating positions of such altered motor vehicles. For the purposes of this subdivision, the term "safety issues" shall include, but not be limited to, the operational condition and functioning of such altered motor vehicle, motor vehicle safety equipment availability and condition, altered motor vehicle inspection and registration, issues related to certificates or permits issued to such altered motor vehicles for the transportation of passengers by the United States department of transportation or the commissioner, and alleged violations of article nineteen, article nineteen-A, or title VII of the vehicle and traffic law by a person

during his or her operation of such an altered motor vehicle.

(b) (i) The commissioner may investigate reports received through such website, and toll-free hotline related to the provisions of this article or article seven of this chapter and, where the commissioner has verified such information, may consider such verified information in the enforcement of such articles, and in setting priorities for enforcement activities.

(ii) The commissioner of motor vehicles may investigate reports received by such website, and toll-free hotline related to the provisions of article five, section three hundred eighty-three, article fourteen, article nineteen, article nineteen-A, and title VII of the vehicle and traffic law and, where substantiated by such commissioner, may consider such substantiated information in the enforcement of articles five, fourteen, and nineteen-A and section three hundred eighty-three of such law, and in setting priorities for enforcement activities.

(iii) In consultation and cooperation with the commissioner of motor vehicles, the commissioner shall report on safety issues reported to such website, and toll-free hotline and related investigations summarizing (A) the total number of safety issue reports received and the type of safety issues reported; (B) the total number of safety issue reports received and the type of safety issues reported where the commissioner or the commissioner of motor vehicles, as applicable, verified the information provided; (C) enforcement actions and other responses taken by the commissioner or the commissioner of motor vehicles, as applicable, to safety issue reports received where the commissioner or the commissioner of motor vehicles, as applicable, has verified such information; and (D) the length of time between the receipt of safety issue reports from such website, or hotline and enforcement action or other response by the commissioner or the commissioner of motor vehicles, as applicable. Such report shall be made publicly available on the department's website in a searchable format, shall be published no less than once annually, and shall compare the previous three years of report data to the extent applicable. Such report may also be included within the department's annual report submitted pursuant to subdivision thirteen of section fourteen of this chapter.

§ 139. Insurance requirements. No certificate or permit shall be issued to a motor carrier or remain in force, unless such carrier complies with such rules and regulations as the commissioner shall prescribe governing the filing and approval of surety bonds, policies of insurance, qualification as a self-insurer or other securities or agreements.

§ 140. Safety requirements. 1. Every common, contract and private carrier of passenger by motor vehicle involved in interstate, intrastate, or international commerce domiciled in New York shall furnish and provide with respect thereto such service and facilities as shall be safe and adequate. Any such carrier shall give immediate notice to the commissioner of every accident to which it shall, in the course of its operations, have been a party.

2. a. Notwithstanding any other provision of law, general or special, the commissioner shall have the power to adopt rules and regulations governing the safety of operation of:

(i) All motor vehicles transporting passengers to and from schools, for hire, or owned and/or operated by school districts or any public or private school. For the purpose of this subdivision, "school" shall be as defined in subdivision twenty-six of section two of this chapter, except that it shall not include schools and community residences as such terms are defined in section 1.03 of the mental hygiene law.

(ii) All motor carriers, private motor carriers, employees and commercial motor vehicles that transport property or passengers in intrastate, interstate, or international commerce.

(iii) All buses operated pursuant to or requiring regulatory authority from any city that has adopted an ordinance, local law or charter to regulate or franchise bus line operations pursuant to section eighty of this chapter.

(iv) All van services or other common carriers of passengers by motor vehicle covered under article seven of this chapter, which van services or other such common carriers of passengers are operated pursuant to or requiring regulatory authority from any city with a population of over one million that has adopted an ordinance or local law pursuant to subdivision five of section eighty of this chapter.

(v) Notwithstanding subparagraph (i) of this paragraph, all motor vehicles transporting passengers under the age of twenty-one from schools and community residences, as such terms are defined in section 1.03 of the mental hygiene law, to school programs approved by the state education department.

(vi) All double-decker vehicles designed to comfortably seat and carry eight or more passengers and providing transportation for compensation when that transportation is performed as a sightseeing service conducted pursuant to the jurisdiction or regulatory control of a city with a population of one million or more when such service is performed wholly within such city.

b. The department shall have the power to examine vehicles, facilities and records subject to the provisions of this subdivision, at any time and place where they are found, to ascertain whether such rules and regulations are being obeyed. The rules and regulations of the commissioner shall provide for the inspection of all such vehicles, facilities and records subject to the provisions of this subdivision, at such periods and at such manner as the commissioner may direct, and, when adopted, shall have the full force and effect of law.

c. In addition to the provisions of section one hundred forty-five of this article:

(i) No motor carrier, private motor carrier, employee or commercial motor vehicle that transports property or passengers in intrastate, interstate, or international commerce shall operate in this state unless such motor carrier, private motor carrier, employee or commercial motor vehicle is in compliance with the department's safety rules and regulations.

(ii) Any person who operates, or any corporation, company, association, joint stock association, partnership, person or any officer or agent thereof, who shall require or permit any person to operate, a motor vehicle in violation of the department's safety rules and regulations shall be guilty of a traffic infraction and all of the provisions of the vehicle and traffic law, except as otherwise specifically provided herein, shall be applicable thereto.

(iii) (a) Except as provided in subparagraph (iv) of this paragraph, any person, corporation, company, association, joint stock association, partnership, person or any officer or agent thereof, found guilty of violating any of the department's safety rules or regulations shall be subject to a fine of not less than two hundred fifty dollars nor more than one thousand dollars for the first offense, and upon being found guilty of a second or subsequent offense committed within eighteen months by a fine of not less than one thousand dollars nor more than one thousand five hundred dollars, or by imprisonment for not more than thirty days or by both such fine and imprisonment.

(b) Any person, corporation, company, association, joint stock association, partnership, person or any officer or agent thereof, found guilty of violating any of the department's safety rules or regulations involving an out-of-service defect relating to brake systems, steering components and/or coupling devices shall be subject to a fine of not less than five hundred dollars nor more than one thousand two hundred fifty dollars for the first offense, and upon being found guilty of a second or subsequent offense committed within eighteen months by a fine of not less than one thousand two hundred fifty dollars nor more than three thousand dollars, or by imprisonment for not more than sixty days or by both such fine and imprisonment; provided, however, that if any such person, corporation, company, association, joint stock association, partnership, person or any officer or agent thereof is operating a farm vehicle registered pursuant to subdivision thirteen of section four hundred one of the vehicle and traffic law in conformance with the terms of such registration, and if the violation as set forth in the summons is corrected not later than one-half hour after sunset on the third full business day after the issuance of the summons and proof of such correction as set forth in item (b) of subparagraph (iv) of this paragraph is submitted to the court, the penalty for a first violation involving brake systems shall be a fine of two hundred fifty dollars, the penalty for a first violation involving steering components and/or coupling devices shall be a fine of two hundred dollars and the penalty for a first violation involving any other out-of-service defect shall be a fine of one hundred fifty dollars. A motor vehicle shall be deemed to be out-of-service only until such time as the applicable out-of-service defect is repaired or adjusted.

Any person, corporation, company, association, joint stock association, partnership, person or any officer or agent thereof, found guilty of violating any of the department's safety rules or regulations involving an out-of-service defect relating to load securement, shall be subject to a fine of not less than one thousand dollars nor more than one thousand five hundred dollars for the first offense, and upon being found guilty of a second or subsequent offense committed within eighteen months by a fine of not less than one thousand five hundred dollars nor more than three thousand dollars, or by imprisonment for not more than sixty days or by both such fine and imprisonment; provided, however, that if any such person, corporation, company, association, joint stock association, partnership, person or any officer or agent thereof is operating a farm vehicle registered pursuant to subdivision thirteen of section four hundred one of the vehicle and traffic law in conformance with the terms of such registration, the penalty for such violation shall be a fine of five hundred dollars. A motor vehicle shall be deemed to be out-of-service only until such time as the applicable out-of-service defect is repaired or adjusted.

(iv) (a) Any complaint issued for an equipment violation, except for a violation involving an out-of-service defect relating to load securement, brake systems, steering components and/or coupling devices or except for a violation involving the operation of any motor vehicle after it has been placed out-of-service, shall be dismissed by the court before such summons is returnable if the violation as set forth in the summons is corrected not later than one-half hour after sunset on the first full business day, or if such complaint involves a farm vehicle registered pursuant to subdivision thirteen of section four hundred one of the vehicle and traffic law and operated in conformance with the terms of such registration, not later than one-half hour after sunset on the third full business day after the issuance of the summons and proof of such correction as set forth in item (b) of this subparagraph is submitted to the court. For the purposes of this subparagraph, "business day" shall mean any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day and Christmas Day.

(b) Acceptable proof of repair or adjustment shall consist of submission to the court on or before the return date of the summons of (I) a statement of correction from an officially designated state inspection station duly executed by the person performing or making such inspection and bearing the official stamp of the state inspection station, (II) a statement of correction from an automobile repair shop on the letterhead of such repair shop duly executed by the person who made the correction or (III) a signed statement of any police officer or a department inspector that the necessary corrections have been made. The statement required by this subparagraph shall be directed to the court having jurisdiction of the alleged violation, shall be affirmed as true under penalty of perjury, and shall include the name, occupation and position of the person making the statement, the time and date that the repairs or inspection were made and a statement that the defective equipment, cited in the violation, on the vehicle in question, is in proper working order.

(v) (a) A driver who is convicted of violating an out-of-service order as provided for in the department's safety rules and regulations shall be guilty of a traffic infraction which shall be punishable by a fine of not less than three thousand dollars nor more than five thousand dollars upon the first offense, and upon being found guilty of a second or subsequent offense within eighteen months by a fine of not less than six thousand dollars nor more than seven thousand dollars.

(b) No person, corporation, limited liability company or business entity, joint stock association, partnership, or any officer or agent thereof, shall knowingly allow, require, permit or authorize any person to operate a commercial motor vehicle as defined by section five hundred one-a of the vehicle and traffic law during any period in which such person, such commercial motor vehicle, or such motor carrier operation has been placed out of service as provided for in the department's safety rules and regulations and shall be subject to a fine of not less than three thousand seven hundred fifty dollars and not more than thirty thousand dollars for any violation thereof.

(c) No person, corporation, limited liability company or business entity, joint stock association, partnership, or any officer or agent thereof, shall knowingly allow, require, permit or authorize any person to operate a commercial motor vehicle as defined in section five hundred one-a of the vehicle and traffic law in violation of section eleven hundred seventy-one or eleven hundred seventy-six of the vehicle and traffic law and, upon conviction thereof, shall be subject to a fine of not more than twelve thousand dollars for any violation thereof.

(vi) If any person, corporation, company, association, joint stock association, partnership, person or any officer or agent thereof, does not appear in response to an appearance ticket or the court's direction, or pay any fine imposed by the court or a civil penalty imposed pursuant to the provisions of section one hundred forty-five of this article, the commissioner of motor vehicles shall have the power to suspend the registration or privilege of operation of any vehicle operated or alleged to have been operated in violation of the department's safety rules and regulations.

(vii) No person, corporation, limited liability company or business entity, joint stock association, partnership, or any officer or agent thereof, shall knowingly allow, require, permit or authorize any person to operate a commercial motor vehicle, as defined in section five hundred one-a of the vehicle and traffic law, during any period in which the operator:

(a) does not have a valid commercial learner's permit or commercial driver's license; or

(b) does not have a commercial learner's permit or commercial driver's license with the proper class or endorsements; or

(c) violates any restriction on such operator's commercial learner's permit or commercial driver's license; or

(d) has a commercial learner's permit or commercial driver's license that is suspended, revoked or cancelled, or such operator has been otherwise disqualified by the commissioner of motor vehicles; or

(e) has more than one commercial learner's permit or commercial driver's license.

A violation of this subparagraph shall be punishable by a fine of not less than two hundred fifty dollars nor more than one thousand two hundred fifty dollars.

3. No motor vehicle designed to carry passengers, as described in subdivision two of this section, shall be operated within the state unless it carries prominently displayed thereon the name of the operator and certificate evidencing an inspection in accordance with the rules and regulations of the commissioner within a period of six months last preceding. The commissioner may, by order, rule or regulation, exempt from the requirements of this subdivision, vehicles which are not operated exclusively in transportation services for which inspection is required, provided that written evidence of the names otherwise subject to prominent display and such a certificate of inspection are at all times carried within such vehicles to be made available for examination upon proper demand, while the vehicles are operated in such service. In addition, the commissioner may, by order, rule or regulation, establish a risk-based inspection program whereby operators whose inspection performance fails to meet performance standards established by the commissioner shall be subject to comprehensive safety reviews and/or additional inspections.

4. Each motor vehicle engaged in the interstate or international transportation of passengers operated within the state shall be subject to subdivision three of this section as to the display of the name of the operator thereof, and of such certificate of inspection as to the safety of its appliances, equipment and mechanical operation, as the commissioner may, by rules and regulations require. In respect to such motor vehicle, the commissioner may, in lieu of a certificate of the commissioner, authorize the display of a certificate of inspection issued within a period of twelve months last preceding, by a regulatory body of another state, or a province of Canada, having safety standards determined by the commissioner not to be substantially lower than those prescribed by the commissioner. The rules and regulations to be adopted under this subdivision shall insofar as practicable be uniform and the provisions of the vehicle and traffic law so far as applicable and not in conflict with the provisions of this subdivision, shall continue to apply to all such motor vehicles.

5. No motor vehicle with a seating capacity of more than eleven passengers manufactured after December thirty-first, nineteen hundred

seventy-five, used in the business of transporting school children for hire or used for the transportation of school children, owned and/or operated by school districts or by any public or private school shall be operated within the state, unless each seat, other than the driver's seat, on such vehicle is equipped with a padded back at least twenty-eight inches in height of a type and specification approved by the commissioner. Any person who operates a motor vehicle in violation of the requirement for such seat backs shall be guilty of a violation, punishable by a fine not exceeding one hundred dollars. The provisions of this subdivision shall not apply to any bus used for the transportation of pupils, teachers and other persons acting in a supervisory capacity to and from school activities and which bus does not receive or discharge passengers on or along the public highways on regularly scheduled routes and which is being operated pursuant to for-hire operating authority issued by the commissioner or by the United States department of transportation. School buses manufactured or assembled prior to April first, nineteen hundred seventy-seven may not be used to transport pupils, teachers and other persons acting in a supervisory capacity to and from school activities.

6. Notwithstanding any inconsistent provision of this chapter or of any other law, general or special, or any rule or regulation, it shall be unlawful, except in cases of emergency, for any person operating any bus in intercity or suburban service where the length of a non-stop trip is more than twenty-five miles to allow passengers to stand in the aisle of any such bus while such bus is in motion. The commissioner may, upon application, waive this provision in unique or special circumstances if it is in the public interest to do so.

7. The powers granted to the commissioner by this section to regulate and prescribe safety requirements for motor vehicle equipment and appliances shall not supersede or otherwise limit, qualify or modify the powers granted to the commissioner of motor vehicles in respect thereto pursuant to the vehicle and traffic law and shall not be exercised, except in furtherance and in addition to any regulations or requirements of the commissioner of motor vehicles made pursuant to law.

8. The jurisdiction of the commissioner over the matters herein conferred on the commissioner shall be exclusive.

9. a. If, after notice and opportunity to be heard, the commissioner shall find that any person is operating in violation of the provisions of this section, the commissioner may penalize such person pursuant to subdivision three of section one hundred forty-five of this article. The commissioner may also notify the commissioner of motor vehicles that such person is operating in violation of this section and the commissioner of motor vehicles shall thereupon suspend the registration of all motor vehicles owned or operated by such person, with the exception of private passenger automobiles, until such time as the commissioner may give notice that the violation has been satisfactorily adjusted, and the commissioner of motor vehicles may direct any police officer to secure possession of the number plates of such motor vehicles and to return the same to the commissioner of motor vehicles. Failure of the holder or of any person possessing such number plates to deliver such number plates to any police officer who requests the same pursuant to this subdivision shall constitute a misdemeanor. The commissioner of motor vehicles shall have the authority to deny a registration or renewal application to any other person for the same vehicle and may deny a registration or renewal application for any other motor vehicle registered in the name of the applicant where it has been determined that such registrant's intent has been to evade the purposes of this subdivision and where the commissioner of motor vehicles has reasonable grounds to believe that such registration or renewal will have the effect of defeating the purposes of this subdivision. The procedure on any such suspension shall be the same as in the case of a suspension under the vehicle and traffic law. Operation of any motor vehicle while under suspension as herein provided shall constitute a class A misdemeanor. A person who operates a motor vehicle while such vehicle is under suspension as provided in this subdivision in a manner that causes the death of another person, knowing that the operation of such vehicle is in violation of this subdivision, shall be guilty of a class E felony.

b. (i) Whenever an altered motor vehicle commonly referred to as a "stretch limousine" has failed an inspection and been placed out-of-service, the commissioner may direct a police officer or agent of such commissioner to immediately secure possession of the number plates of such vehicle and return the same to the commissioner of motor vehicles. The commissioner shall notify the commissioner of motor vehicles to that effect, and the commissioner of motor vehicles shall thereupon suspend the registration of such vehicle until such time as the commissioner gives notice that the out-of-service defect has been satisfactorily adjusted. Provided, however, that the commissioner shall give notice and an opportunity to be heard within not more than thirty days of the suspension. Failure of the holder or of any person possessing such plates to deliver to the commissioner or agent of such commissioner who requests the same pursuant to this paragraph shall be a misdemeanor. The commissioner of motor vehicles shall have the authority to deny a registration or renewal application to any other person for the same vehicle where it has been determined that such registrant's intent has been to evade the purposes of this paragraph and where the commissioner of motor vehicles has reasonable grounds to believe that such registration or renewal will have the effect of defeating the purposes of this paragraph. The procedure on any such suspension shall be the same as in the case of a suspension under the vehicle and traffic law.

(i-a) No person, corporation, limited liability company or business entity, joint stock association, partnership, or any officer or agent thereof, shall operate or knowingly allow, require, permit or authorize any person to operate a motor vehicle while under suspension as provided in subparagraph (i) of this paragraph. A violation of this subparagraph shall constitute a class A misdemeanor punishable by a fine of not less than five thousand dollars nor more than twenty-five thousand dollars in addition to any other penalties provided by law.

(ii) (a) Upon the seizure of number plates pursuant to subparagraph (i) of this paragraph, if the out-of-service defect is of a type where pursuant to the commissioner's regulations no inspection certificate will be issued until the defect is repaired and a re-inspection is conducted, or is related to its horn, and the commissioner determines that allowing the altered motor vehicle to leave the inspection area would be contrary to public safety, the commissioner may: (A) remove or arrange for the removal of, or may direct any police officer to remove or arrange for the removal of, the altered motor vehicle to a non-public garage or other place of safety where it shall remain impounded, subject to the provisions of this section; or (B) immobilize or arrange for the immobilization of the altered motor vehicle on premises owned or under the control of the owner of such altered motor vehicle, subject to the provisions of this section. The altered motor vehicle shall be entered into the New York statewide police information network as an impounded or immobilized vehicle and the commissioner shall promptly notify the owner that the altered motor vehicle has been impounded or immobilized and the reason or reasons for such impoundment or immobilization, and give such owner an opportunity to be heard within not more than thirty days of the suspension imposed pursuant to subparagraph (i) of this paragraph.

(b) A motor vehicle so impounded or immobilized shall be in the custody of the commissioner and shall not be released unless the commissioner is satisfied that repairs have been scheduled or been made to satisfactorily adjust such vehicle's out-of-service defect or defects and such vehicle has been re-inspected.

(c) The commissioner shall provide written notice to the owner or operator of the service repair shop or impoundment lot informing them that such impounded vehicle shall not be released without the written approval of the commissioner. Release of such impounded vehicle without approval by the commissioner shall be punishable by a fine of up to ten thousand dollars;

10. For purposes of this section, the terms "employee" and "employer" shall have the same meanings as such terms are defined by section 390.5 of title 49 of the code of federal regulations, as such regulations are amended from time to time.

§ 141. Orders, notices and service. Every motor carrier operating pursuant to a certificate or permit issued under this chapter shall file with the commissioner a designation in writing of the name and post office address of a person upon whom or which service of notices or orders may be made. Such designation may from time to time be changed by like writing similarly filed. In default of such designation, service of any notice or order may be made by posting in the office of the commissioner. Whenever notice is given by mail as provided herein the date of mailing shall be considered as the time when notice is served.

§ 142. Rate bureau regulation. 1. For the purpose of achieving a stable rate structure through regulated competition, the commissioner shall establish rules and regulations with respect to collective ratemaking procedures for all motor carrier transportation services over which the commissioner has jurisdiction. Any common carrier of property or passengers by motor vehicle subject to regulation by the commissioner and party to an agreement between or among two or more carriers relating to rates, fares, classifications, divisions, allowances or charges, including charges between carriers and compensation paid or received for the use of facilities and equipment, or rules and regulations pertaining thereto, or procedures for the joint consideration, initiation or establishment thereof, may, under such rules and regulations as the commissioner may prescribe, apply to the commissioner for approval of the agreement, and the commissioner shall by order approve any such agreement if it is found that, by reason of the transportation policy declared in section one hundred thirty-seven of this article, the relief provided in subdivision seven of this section should apply with respect to the making and carrying out of such agreement; otherwise the application shall be denied. The approval of the commissioner shall be granted only upon such terms and conditions as the commissioner may prescribe as necessary to carry out the purposes of this article.

2. Each conference, bureau, committee or other organization established or continued pursuant to any such agreement approved by the commissioner under this section shall maintain such accounts, records, files and memoranda and shall submit to the commissioner such information and reports as may be prescribed by the commissioner and all such accounts, records, files and memoranda shall be subject to inspection by the commissioner or department representatives.

3. The commissioner shall not approve any such agreement which is an

agreement with respect to a pooling or division of traffic, or service, or of gross or net earnings, or of any portion thereof.

4. The commissioner shall not approve under this section any agreement which establishes a procedure for the determination of any matter through joint consideration unless it is found that under the agreement there is accorded to each party the free and unrestrained right to take independent action either before or after any determination arrived at through such procedure.

5. The commissioner is authorized, upon complaint or upon the commissioner's initiative without complaint, to investigate and determine whether any such agreement previously approved under this section, or terms and conditions upon which such approval was granted, is not or are not, in conformity with the standards set forth in subdivision one of this section, or whether any such terms and conditions are unnecessary for the purposes of conformity with such standards, and, after such investigation, the commissioner may by order terminate or modify any approval of such agreement, or modify the terms and conditions of such approval, if such action is necessary to assure conformity with such standards. The effective date of any order terminating or modifying approval, or modifying terms and conditions, shall be postponed for such period as the commissioner determines to be reasonably necessary to avoid undue hardships.

6. No order shall be entered under this section except after interested parties have been afforded reasonable notice and opportunity to be heard.

7. Parties to any such agreement approved by the commissioner under this section and other parties are hereby relieved from the operation of section three hundred forty of the general business law with respect to the making of such agreement, and with respect to the carrying out of such agreement in conformity with the terms and conditions prescribed by the commissioner.

8. Rate conferences, by regulating collective ratemaking under the

supervision of the department, have established a system of pricing actively supervised by the department which fosters competition through approved rate levels and the right of independent action while furnishing a responsible transportation service to the public. Continued departmental supervision of proposed rate filings by such conferences will continue to yield advantageous transportation rates which, although they may tend to displace competition in the classical sense, in actuality foster responsible, competitive motor carrier transportation service to the public, while concurrently developing and approving competitive rate levels among motor carriers in furtherance of the transportation policy contained in section one hundred thirty-seven of this chapter. The dangers inherent in a consumer's selection of a motor carrier on the basis of price alone will also be discouraged.

§ 143. Vehicle identification. It shall be unlawful for any motor carrier holding a certificate or permit from the commissioner to operate any motor vehicle upon the highways of this state unless there is firmly affixed to such motor vehicle proper identification in accordance with the rules and regulations promulgated by the commissioner.

§ 144. Fees and charges. The commissioner or authorized officer or employee of the department shall charge and collect eighty-five dollars for the inspection or reinspection of all motor vehicles transporting passengers subject to the department's inspection requirements pursuant to section one hundred forty of this article, except such: (a) motor vehicles operated under contract with a municipality to provide statewide mass transportation operating assistance eligible service; (b) motor vehicles operated under contract with a municipality or school district to provide school-related transportation services; (c) motor vehicles authorized by the commissioner of health to provide non-emergency medical transportation services; and (d) motor vehicles used primarily to transport passengers pursuant to subparagraphs (i), (iii), (iv), and (v) of paragraph a of subdivision two of section one hundred forty of this article. The department may deny inspection of any motor vehicle transporting passengers subject to the department's inspection requirements if such fee is not paid within ninety days of the date noted on the department invoice.

§ 145. Penalties and forfeitures for violations. 1. Any certificate or permit may, after a hearing, be suspended, cancelled, revoked or modified, in whole or in part, for failure to comply with the provisions of this chapter or with any lawful rule, order or regulation of the commissioner promulgated hereunder or with any term, condition, or limitation of such certificate or permit or for failure to render reasonably continuous service within the scope of the certificate or permit.

2. The commissioner may upon complaint or upon the commissioner's initiative without complaint institute proceedings to revoke, cancel, suspend or modify any certificate or permit issued pursuant to this chapter after a hearing at which the holder of such certificate or permit and any person making such complaint shall be given an opportunity to be heard. Provided, however, that any order of the commissioner revoking, cancelling, suspending or modifying any certificate or permit shall not become effective until thirty days after the serving of notice thereof upon the holder of such certificate or permit, unless the commissioner determines that the continued holding of such certificate or permit for such period would be contrary to the public interest. Hearings shall be held in such manner and upon such notice as may be prescribed by rules of the commissioner, but such notice shall be of not less than ten days and shall state the nature of the complaint.

3. In addition to, or in lieu of, any sanctions set forth in this section, the commissioner may, after a hearing, impose a penalty not to exceed a maximum of ten thousand dollars in any one proceeding upon any person if the commissioner finds that such person or officer, agent or employee thereof has failed to comply with the requirements of this chapter or any rule, regulation or order of the commissioner promulgated thereunder. If such penalty is not paid within four months, the amount thereof may be entered as a judgment in the office of the clerk of the

county of Albany and in any other county in which the person resides, has a place of business or through which it operates. Thereafter, if said judgment has not been satisfied within ninety days, any certificate or permit held by any such person may be revoked upon notice but without a further hearing. Provided, however, that if a person shall apply for a rehearing of the determination of the penalty pursuant to the provisions of section eighty-nine of this chapter, judgment shall not be entered until a determination has been made on the application for a rehearing. Further provided however, that if after a rehearing a penalty is imposed and such penalty is not paid within four months of the date of service of the rehearing decision, the amount of such penalty may be entered as a judgment in the office of the clerk of the county of Albany and in any other county in which the person resides, has a place of business or through which it operates. Thereafter, if said judgment has not been satisfied within ninety days, any certificate or permit held by any such person may be revoked upon notice but without a further hearing.

4. If after notice and opportunity to be heard, the commissioner shall find that any person or persons is or are providing transportation subject to regulation under this chapter without having any certificate or permit, or is or are holding themselves out to the public by advertising or any other means to provide such transportation without having any certificate or permit or approval from a city having jurisdiction pursuant to section eighty of this chapter, the commissioner may notify the commissioner of motor vehicles to that effect and the commissioner of motor vehicles shall thereupon suspend the registration or registrations of all motor vehicles owned or operated by such person or persons except private passenger automobiles until such time as the commissioner of transportation may give notice that the violation has been satisfactorily adjusted, and the commissioner of motor vehicles may direct any police officer to secure possession of the number plates of such motor vehicles and to return the same to the commissioner of motor vehicles. Failure of the holder or of any person possessing such number plates to deliver such number plates to any police officer who requests the same pursuant to this subdivision shall constitute a misdemeanor. The commissioner of motor vehicles shall have the authority to deny a registration or renewal application to any

other person for the same vehicle and may deny a registration or renewal application for any other motor vehicle registered in the name of the applicant where it has been determined that such registrant's intent has been to evade the purposes of this subdivision and where the commissioner of motor vehicles has reasonable grounds to believe that such registration or renewal will have the effect of defeating the purposes of this subdivision. The procedure on any such suspension shall be the same as in the case of a suspension under the vehicle and traffic law. Operation of any motor vehicle while under suspension as herein provided shall constitute a class A misdemeanor. A person who operates a motor vehicle while such vehicle is under suspension as provided in this subdivision in a manner that causes the death of another person, knowing that the operation of such vehicle is in violation of this subdivision, shall be guilty of a class E felony.

5. Any person, whether carrier, passenger, shipper, consignee, or broker, or any officer, employee, agent or representative thereof, who shall knowingly offer, grant or give or solicit, accept, or receive any rebate, concession or discrimination in violation of this chapter, or who by means of any false statement or representation, or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease or bill of sale, or by any other means or device, shall knowingly and willfully assist, suffer or permit any person or persons to obtain transportation of property or passengers subject to this chapter for less than the applicable rate, toll or charge, or who, with respect to the transportation of household goods, shall knowingly or willfully misrepresent the applicable rate for transportation or the weight of a shipment or the cost of transportation to the shipper, or who shall knowingly and willfully by any such means or otherwise fraudulently seek to evade or defeat regulation as provided for in this chapter, shall be guilty of a misdemeanor and upon conviction thereof be fined not more than one thousand dollars for the first offense and not more than two thousand five hundred dollars for any subsequent offense.

6. Any person who shall provide transportation for compensation within the state, or hold himself or herself out to the public by advertising

or any other means to provide such transportation, when such transportation requires either the permission or approval of the commissioner, or the permission, approval or franchise of any city having regulatory jurisdiction over such transportation and who does not possess a valid permit, certificate or approval for such transportation, from the commissioner or from such city, shall be guilty of a traffic infraction punishable by a fine of not less than one thousand dollars and not more than one thousand five hundred dollars for the first offense. A violation of this subdivision by a person who has previously been convicted of such offense within five years of the violation shall be a misdemeanor and shall be punishable by a fine of not less than two thousand dollars and not more than five thousand dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment. Upon conviction as a second or subsequent offender as described herein the court may order forfeiture of any right, title or interest held by the defendant in any motor vehicle used in the commission of such offense pursuant to the provisions of subdivision seven of this section. In addition to, or in lieu of, any sanction set forth in this subdivision, the commissioner may, after a hearing, impose a penalty equal to the gain or profit derived from transportation services conducted in violation of this subdivision. Any person holding regulatory authority or a franchise from either the commissioner or any city having regulatory jurisdiction over such transportation, or any public transportation authority created pursuant to title nine, eleven, eleven-A, eleven-B, eleven-C or eleven-D of article five of the public authorities law, who is being adversely affected by a person providing transportation without having the necessary regulatory authority or franchise from the commissioner or any such city, may bring suit in his, her or its own behalf to restrain such person and recover damages resulting from the actions of such person.

7. (a) Whenever it appears that any person is violating the provisions of subdivision six of this section, the commissioner acting by the attorney general, or the city acting by its corporation counsel, or designee, may bring suit against such person in any court of competent jurisdiction to restrain such person from continuing such violation. In any such suit, the court shall have jurisdiction to grant to the

commissioner or city without bond or other undertaking, such prohibitory or mandatory injunctions as the facts may warrant, including temporary restraining orders and preliminary or permanent injunctions, and to levy upon the gain or profit that may be subject to a penalty pursuant to subdivision six of this section. In cities with a population of one million or more, the police department shall have the power to issue summonses for violations of subdivision six of this section and those summonses shall be adjudicated according to the rules and regulations set forth in article two-A of the vehicle and traffic law. The hearing officer responsible for adjudication of any violation of such subdivision six shall review the record of any person found guilty of violating such subdivision six to determine whether or not that person has a prior conviction under such subdivision six. After a review of the record, if it is found that there has been a prior conviction, the hearing officer shall refer the matter to the appropriate local criminal court for prosecution under this article.

(b) Any person convicted as a third or subsequent offender as described in subdivision six shall be subject to a court order divesting him of any right, title or interest in any motor vehicle used in the commission of the offense. An action for forfeiture may be commenced by the attorney general on behalf of the commissioner or the corporation counsel or designee on behalf of the city in any superior court in the county of conviction. The defendant shall have a right to a trial by jury on any issue of fact. The plaintiff in the forfeiture action shall have the burden of proof by clear and convincing evidence on such issues of fact.

(c) Any order of forfeiture issued pursuant to this subdivision shall include provisions for the disposal of the property found to have been forfeited. Such provisions shall be directed to the attorney general or corporation counsel or designee as the case may be, and may include, but are not limited to, an order directing that the property be sold in accordance with provisions of article fifty-one of the civil practice law and rules. Net proceeds of the sale shall be paid into the general fund of the state or city, as the case may be, less all costs and attendant expenses of seizure, storage and forfeiture, as the case may be, which shall be paid to the office of the attorney general or corporation counsel in the appropriate case notwithstanding any other provisions of law.

8. All penalties charged and collected by the commissioner pursuant to this section shall be deposited by the comptroller into the special obligation reserve and payment account of the dedicated highway and bridge trust fund established pursuant to section eight-nine-b of the state finance law.

§ 146. Adequacy of service. It shall be the duty of every motor carrier to provide adequate service, equipment and facilities under such rules and regulations as the commissioner may prescribe.

§ 147. Dogs accompanying persons with a disability. Subject to such rules and regulations as the commissioner may prescribe, all common and contract carriers of passengers by motor vehicle shall permit a guide dog, hearing dog or service dog as defined in section forty-seven-b of the civil rights law accompanying a person with a disability, as defined in subdivision twenty-one of section two hundred ninety-two of the executive law, to accompany, to guide, or otherwise to aid such person, to ride on all vehicles operated for transportation and no charge shall be made for the transportation of such dog.

ARTICLE 7

CARRIERS OF PASSENGERS BY MOTOR VEHICLES

§ 150. Application of article. This article shall apply to common carriers of passengers by motor vehicle and contract carriers of passengers by motor vehicle.

§ 151. Exemptions. The provisions of this article shall not apply to any transportation for compensation in sedans, as such term is defined herein at the end of this section, or station wagons or to any transportation for compensation that is provided in vehicles larger than sedans or station wagons when that transportation is performed:

1. Incidental to or in furtherance of any non-transportation commercial or not-for-profit enterprise of the provider of the transportation when such transportation is not open to the general public;

2. To and from schools and school-related activities;

3. In non-profit car pools;

4. On an occasional, casual or reciprocal basis by persons not engaged in transportation as a regular occupation or business;

5. As a sightseeing service conducted pursuant to the jurisdiction or regulatory control of a city, village or town when such service is operated wholly within the county in which the city, town or village is located or when such service is operated wholly within a city with a population of one million or more;

6. In ambulances that are under the jurisdiction of the New York state department of health;

7. By transportation authorities when the transportation performed is wholly within the transportation district prescribed by the public

authorities law for such transportation authority;

8. By transportation systems that are wholly owned by a municipality when the transportation performed is wholly within such municipality's boundaries;

9. By bus lines operating wholly within any city having regulatory control or jurisdiction over bus line operations pursuant to subdivision four of section eighty of this chapter; and

10. By carriers operating under a contract with an employer to provide transportation for the exclusive use of employees.

11. As a taxi or livery service, except for transportation services that are designed for the transportation of transportation-disabled persons, conducted in vehicles having a seating capacity of less than fifteen passengers pursuant to the jurisdiction or regulatory control of a municipality, other than a city with a population over one million, authorized to adopt an ordinance relating to both registration and licensing pursuant to subdivision one of section one hundred eighty-one of the general municipal law, when service is conducted wholly within such municipality and when such service is available to the general public on a prearranged or demand-response basis over a non-specified or irregular route with the point or points of pick-up and discharge determined by the passenger, but such taxi or livery service shall not include van service. For the purpose of this subdivision, the term "livery service" shall include the term "limousines" as used in subdivision one of section one hundred eighty-one of the general municipal law. Provided, however, that altered motor vehicles commonly referred to as "stretch limousines" having a seating capacity of nine or more passengers including the driver shall be subject to the provisions of section one hundred forty of this chapter.

12. As a taxi or livery service conducted in vehicles having a seating capacity of twenty passengers or less pursuant to the jurisdiction or regulatory control of a city with a population over one million, when such service is conducted wholly within such a city; provided, however,

that vehicles having a seating capacity of fifteen or more passengers and altered motor vehicles commonly referred to as "stretch limousines" having a seating capacity of nine or more passengers including the driver shall be subject to the provisions of section one hundred forty of this chapter.

For the purposes of this article, the term "sedan" or "sedans" as used herein shall include private passenger automobiles, but shall not include commercial motor vehicles with a seating capacity of eleven persons or more including the driver.

§ 152. Certificate and permit requirement. 1. No person or persons shall engage in intrastate transportation as a common carrier of passengers by motor vehicle on any highway in this state, or hold themselves out by advertising or any other means to provide such transportation, unless there is in force with respect to such person or persons a certificate issued by the commissioner.

2. No person or persons shall engage in intrastate transportation as a contract carrier of passengers by motor vehicle on any highway in this state, or hold themselves out by advertising or any other means to provide such transportation, unless there is in force with respect to such person or persons a permit issued by the commissioner.

3. Applications for certificates or permits shall be made in writing to the commissioner, be verified under oath, and shall be in such form and contain such information as the commissioner by regulation may require. The commissioner shall provide for publication of a notice of the application.

§ 153. Issuance of temporary authority. 1. A temporary certificate of public convenience and necessity to operate as a common carrier of passengers may be issued by the commissioner after public notice and with or without hearing, except as provided in subdivisions five and seven of this section, to an applicant upon a finding that the applicant is fit, willing and able to perform a service for which there is an immediate or urgent need. Such a temporary certificate of public convenience and necessity may also be issued on the commissioner's own motion for the purpose of experiment or demonstration when the commissioner is of the opinion that such action is required by the public interest.

2. A temporary permit to operate as a contract carrier of passengers may be issued by the commissioner after public notice and with or without a hearing, to an applicant upon a finding that the applicant is fit, willing and able to perform a service, for which there is an immediate or urgent need.

3. A temporary certificate or a temporary permit will:

(a) create no presumption that corresponding permanent authority will be granted;

(b) confer no proprietary or property rights in the use of the highways;

(c) be granted for a period not to exceed six months, which may be renewed by the commissioner for good cause shown; and

(d) be subject to any conditions deemed to be appropriate by the commissioner.

4. Notwithstanding any other provision of law, if the commissioner determines that, due to emergency conditions, there is not sufficient time to process an application for temporary authority under this section, the commissioner may grant emergency temporary authority pursuant to such conditions and regulations that may be prescribed by the commissioner. Unless suspended or revoked, such emergency temporary authority shall be granted for not more than thirty days.

5. If any application for authority to operate a bus line through a county, city, village or town or in or through a territory or district served by a bus line or a public transportation authority created pursuant to titles nine, eleven, eleven-A eleven-B, eleven-C and eleven-D of article five of the public authorities law is protested by any such municipality, bus line, or public transportation authority, and

a hearing on such application is requested, then no temporary authority shall be granted prior to a hearing held on such application. The commissioner shall consider any reasonable conditions required of the applicant by such municipality regarding routing and franchise requirements and, in cities having a population of over one million persons the commissioner shall adopt the intracity routing requirements to the proposed destination point or points that are established by any such city, provided that such city furnishes the routing requirements to the commissioner within sixty days of the filing of the application with the department. In addition the commission shall adopt insurance requirements provided for by any such city. Except for the routing and insurance requirements in cities having a population of over one million persons, the commissioner shall impose conditions on the applicant deemed to be reasonable and in the public interest as a condition to any authority granted.

6. Notwithstanding any other provision of law, on any application for temporary authority to operate a bus line originating or terminating in any city, the commissioner shall, in addition to the requirements specified in subdivision one of this section, also consider and evaluate the application and any objections to the application in accordance with the following criteria:

(a) The adequacy of the existing mass transit and mass transportation facilities to meet the transportation needs of any particular segment of the general public for the proposed service; and

(b) The impact that the proposed operation may have on any existing mass transit or mass transportation facilities.

7. If any application to operate a van service originating or terminating within a city is protested by the governing body of such city, a bus line operating in said city or a public transportation authority created pursuant to titles nine, eleven, eleven-A, eleven-B, eleven-C and eleven-D of article five of the public authorities law whose territory or district includes said city, and a hearing is requested, such hearing shall be held. Based on the evidence submitted at such hearing the commissioner shall, in addition to the requirements specified in subdivision one hereof, consider and evaluate the

application and the objections to the application in accordance with the following criteria:

(a) The adequacy of the existing mass transit and mass transportation facilities to meet the transportation needs of any particular segment of the general public for the proposed service; and

(b) The impact that the proposed operation may have on any existing mass transit or mass transportation facilities.

8. When an applicant proposes to operate a bus line or van service into a city that has adopted an ordinance, local law or charter to regulate or franchise bus lines and the commissioner determines that those portions of the proposed operation that are not wholly within such a city are not integral to the entire operation, such application shall be denied.

§ 154. Issuance of a permanent certificate. 1. The commissioner may issue a permanent certificate of public convenience and necessity to operate as a common carrier of passengers to an applicant with or without hearing, except as provided in subdivisions two and seven of this section, but upon notice to all interested parties. If any application for authority to operate a bus line through a county, city, village or town or in or through a territory or district served by a bus line or a public transportation authority created pursuant to titles nine, eleven, eleven-A, eleven-B, eleven-C and eleven-D of article five of the public authorities law is protested by any such municipality, bus line, or public transportation authority, and hearing on such application is requested then no permanent authority shall be granted prior to a hearing held on such application. The commissioner shall consider any reasonable conditions required of the applicant by such municipality regarding routing and franchise requirements and, in cities having a population of over one million persons the commissioner shall adopt the intracity routing requirements to the proposed destination point or points that are established by any such city, provided that such city furnishes the routing requirements to the commissioner within sixty days of the filing of the application with the department. In addition the commissioner shall adopt insurance requirements provided for by any such city. Except for the routing and insurance requirements in cities having a population of over one million persons, the commissioner shall impose requirements on the applicant deemed to be reasonable and in the public interest as a condition to any authority granted. The application for a permanent certificate shall be granted if the commissioner finds that:

(a) the applicant is fit, willing and able to provide the transportation to be authorized by the certificate and to comply with this chapter and the regulations of the commissioner; and

(b) the service proposed will be required by the present or future public convenience and necessity.

2. Notwithstanding any other provision of law, on any application for permanent authority to operate a bus line originating or terminating in any city, the commissioner shall, in addition to the requirements specified in subdivision one of this section, also consider and evaluate the application and any objections to the application in accordance with the following criteria:

(a) The adequacy of the existing mass transit and mass transportation facilities to meet the transportation needs of any particular segment of the general public for the proposed service; and

(b) The impact that the proposed operation may have on any existing mass transit or mass transportation facilities.

3. Any person holding a permanent certificate of public convenience and necessity to provide bus line service shall be granted authority upon application therefor, without a hearing or notice, to transport chartered or special parties to all points in the state under such rules and regulations as the commissioner shall prescribe.

4. Any person holding a permanent certificate of public convenience and necessity to provide bus line service shall be granted authority upon application therefor, without a hearing or notice, to transport shipments of property not exceeding one hundred pounds within the scope of its bus line certificate under such rules and regulations as the commissioner shall prescribe.

5. No certificate issued under this article shall confer any proprietary or property rights in the use of the highways.

6. Any person holding a permanent certificate to provide bus line service shall not discontinue service on any route unless an application is made to the commissioner and the commissioner approves such application upon a finding that the public convenience and necessity no longer requires such bus line service.

7. If any application to operate a van service originating or terminating within a city is protested by the governing body of such city, a bus line operating in said city or a public transportation authority created pursuant to titles nine, eleven, eleven-A, eleven-B, eleven-C and eleven-D of article five of the public authorities law whose territory or district includes said city, and a hearing is requested, such hearing shall be held. Based on the evidence submitted at such hearing the commissioner shall, in addition to the requirements specified in subdivision one hereof, consider and evaluate the application and the objections to the application in accordance with the following criteria:

(a) The adequacy of the existing mass transit and mass transportation facilities to meet the transportation needs of any particular segment of the general public for the proposed service; and

(b) The impact that the proposed operation may have on any existing mass transit or mass transportation facilities.

8. When an applicant proposes to operate a bus line or van service into a city that has adopted an ordinance, local law or charter to regulate or franchise bus lines and the commissioner determines that those portions of the proposed operation that are not wholly within such a city are not integral to the entire operation, such application shall be denied.

§ 155. Issuance of a permanent permit. 1. A permanent permit to operate as a contract carrier of passengers may be issued by the commissioner to an applicant with or without a hearing, but upon notice to all interested parties, authorizing such applicant to provide transportation as a contract carrier of passengers. The application for a permanent permit shall be granted if the commissioner finds that:

(a) the applicant is fit, willing and able to provide the transportation to be authorized by the permit and to comply with this chapter and the regulations of the commissioner; and

(b) the proposed service is or will be consistent with the public interest and the policy declared in section one hundred thirty-seven of this chapter.

2. No permit issued under this article shall confer any proprietary or property rights in the use of the highways.

§ 156. Amendment, revocation and transfer of certificates and permits. 1. Certificates and permits shall be effective from the date specified therein, and shall remain in effect until terminated as herein provided. Any such certificate or permit may, upon application of the holder and in the discretion of the commissioner, be amended or revoked, in whole or in part, or may be suspended, cancelled, revoked or modified pursuant to section one hundred forty-five of this chapter.

2. Any certificate or permit may be suspended by the commissioner without hearing for failure to file or keep in force a tariff as required by section one hundred fifty-eight of this article, for failure to comply with the insurance requirements of section one hundred thirty-nine of this chapter; for failure to file annual reports as required by the regulations of the commissioner or for failure to adhere to the safety requirements of section one hundred forty of this chapter. Any such certificate or permit so suspended may thereafter be revoked in no less than thirty days after the date of suspension ordered by the commissioner without hearing if the carrier does not comply with the tariff, insurance, annual reporting or safety requirements.

3. Certificates or permits shall not be assigned or transferred, in any manner, nor shall the right to operate under any certificate or permit be leased without prior approval of the commissioner upon such

notice as the commissioner shall deem appropriate. The assignment, transfer or lease of certificates or permits or the right to operate under any certificate or permit, shall not be approved unless the commissioner shall find that it is in the public interest to do so. All applications for transfer or lease must be in such form as prescribed by the commissioner.

§ 157. Rates, fares and charges; common carriers. 1. It shall be the duty of every common carrier of passengers to establish, observe and enforce just and reasonable rates, fares and charges, and just and reasonable regulations and practices relating thereto.

2. Common carriers of passengers by motor vehicle may establish through routes and joint rates, fares and charges with other such carriers and once established it shall be the duty of all such carrier parties to establish just and reasonable rates, fares, charges, regulations and practices and equitable divisions of revenue.

3. All such charges made for any service rendered, or to be rendered by any common carrier of passengers by motor vehicle, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any common carrier to make, give or cause any undue or unreasonable preference or advantage to any particular person or to subject any particular person to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

4. Whenever, after a hearing, upon complaint, or in an investigation on the commissioner's own initiative, the commissioner shall determine that any individual or joint rate, fare or charge in effect or proposed to be put into effect by any common carrier or group of common carriers of passengers by motor vehicle or any rule, regulation or practice whatsoever affecting such rate, fare or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory, unduly preferential or unduly prejudicial, the commissioner shall determine and prescribe the lawful rate, fare or

charge, or the lawful rule, regulation or practice thereafter to be observed.

5. The commissioner shall, whenever deemed necessary or desirable in the public interest, after a hearing, upon complaint or upon the commissioner's own initiative, establish through routes and joint rates, fares, charges, regulations or practices, applicable to the transportation of passengers by common carriers and the terms and conditions under which such through routes shall be operated.

6. Whenever, after a hearing, upon complaint or upon the commissioner's own initiative, the commissioner shall determine that the divisions of joint rates, fares or charges applicable to the transportation of passengers by common carriers are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carrier parties, the commissioner shall by order prescribe the just, reasonable and equitable divisions thereof. The order of the commissioner may require the adjustment of divisions between the carriers, in accordance with the order, from the date of filing the complaint or entry of order of investigation, or such other date subsequent as the commissioner finds justified and, in the case of joint rates or fares prescribed by the commissioner, the order as to divisions may be made effective as a part of the original order.

7. In proceedings to determine the reasonableness of rate or fare levels for a common carrier of passengers or group of common carriers of passengers, the commissioner shall authorize revenue levels that are adequate under efficient management to cover total operating expenses, plus a reasonable profit as determined by the commissioner.

§ 158. Tariff requirements; common carriers. 1. No common carrier of passengers shall engage in transportation unless the rates, fares and charges of said carrier have been prescribed by the commissioner or filed by the carrier in accordance with the provisions of this article.

2. Whenever an applicable tariff has not already been prescribed by

the commissioner, every common carrier of passengers shall file with the commissioner and at all times keep open to public inspection tariffs showing all the rates, fares and charges for transportation, and all services in connection therewith, between points on its own route and points on the route of any other such carrier, or on the routes of any other common carrier when a through route has been established. Such rates, fares and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed and posted in such form and manner and shall contain such information as the commissioner by regulation shall prescribe, and the commissioner is authorized to reject any tariff which is not in accordance with this article and with such regulations. Any such tariff so rejected by the commissioner shall be void and its use shall be unlawful.

3. No common carrier of passengers shall charge, demand, collect or receive different compensation for transportation or for any service in connection therewith between the points enumerated in such tariff than the rates, fares and charges specified in the tariffs in effect at the time and no such carrier shall refund or remit in any manner or by any device, directly or indirectly, or through any agent or broker or otherwise, any portion of the rates, fares or charges so specified, or extend to any person any privilege for transportation except as is specified in its tariff.

4. No change shall be made in any rate, fare or charge, or the value of the service thereunder, specified in any effective tariff of a common carrier, except after thirty days' notice of the proposed change filed and posted in accordance with the rules and regulations prescribed by the commissioner. The commissioner may, for good cause shown, allow such change upon less than thirty days' notice or modify the requirements of this section with respect to posting and filing of tariffs either in particular circumstances or by general order applicable to special or particular circumstances or conditions.

5. Whenever a change is proposed in the tariff of any common carrier of passengers, the commissioner may suspend the implementation of such

tariff change and defer the use of such tariff for a period of six months. After investigation and hearing the commissioner may allow the tariff change as proposed or may issue an order directing the carrier to cancel or modify the proposed tariff change. Provided, however, that if a decision is not rendered within the six month suspension period the proposed tariff change shall go into effect at the end of such suspension period. In any hearing to determine the reasonableness or lawfulness of a proposed tariff change the burden of proof shall be on the carrier or carriers proposing the tariff change.

§ 159. Complaints as to rates, fares and service. 1. Upon the complaint in writing of the county executive or board of supervisors of a county, the mayor of a city, the trustees or mayor of a village or the town board of a town in which a common carrier of passengers by motor vehicle is authorized to operate, or upon the complaint in writing of not less than twenty-five persons in any such municipality, or upon complaint of a common carrier of passengers by motor vehicle supplying such service, as to the rates, fares or charges demanded, received or collected, or as to the methods employed in furnishing such service or as to the amount of service furnished or as to extension of a route or routes, the commissioner or a representative of the commissioner may inspect the property, equipment and appliances and methods used by such common carrier of passengers by motor vehicle in furnishing such service, and may cause an investigation as to the necessity of any proposed extensions, and may examine or cause to be examined the books and papers of such common carrier of passengers by motor vehicle pertaining to such service in such municipality. The form and contents of complaints made as provided in this section shall be prescribed by the commissioner. Such complaints shall be signed by the officers, or by the persons making them, who must add to their signatures their places of residence, by street and number, if any.

2. Before proceeding under a complaint presented as provided in subdivision one of this section, the commissioner shall cause notice of such complaint, and the purpose thereof, to be served upon the common carrier of passengers by motor vehicle affected thereby. Such common

carrier of passengers by motor vehicle shall have an opportunity to be heard in respect to the matters complained of at a time and place to be specified in such notice. An investigation may be instituted by the commissioner as to any matter of which complaint may be made, as provided in subdivision one of this section, or to ascertain the facts requisite to the exercise of any powers. After a hearing and after such an investigation as shall have been made, the commissioner may, by order, fix the just and reasonable rates, fares and charges to be charged by the common carrier of passengers by motor vehicle for the service to be furnished and the amount of service furnished, and may order such extension of an existing route or routes as is deemed necessary, and may order such improvement in such service, or in the methods employed by such common carrier of passengers by motor vehicle as will be adequate, just and reasonable. Any change in rates, fares, charges, routes or amount of service shall be upon such terms, conditions or safeguards as the commissioner may prescribe. If it shall be made to appear to the satisfaction of the commissioner that the public interest requires a change in rates, fares, charges, routes or service or that such change is necessary for the purpose of providing adequate and efficient service, or for the preservation of the property, the commissioner, upon such terms, conditions or safeguards as are deemed proper, may authorize an immediate, reasonable, temporary increase or decrease in such rates, fares, charges, routes or service pending a final determination of the rates, fares, charges, routes and service to be thereafter charged by such common carrier of passengers by motor vehicle. The terms, conditions or safeguards prescribed may include provisions for the purposes for which the additional revenue derived from any such temporary increase may be expended and for the impounding thereof until the same shall be applied to the purposes so specified. The rate or fare fixed by the commissioner under this section shall be the rate or fare to be charged by such common carrier of passengers by motor vehicle for the service to be furnished until the commissioner shall fix in the manner heretofore described a higher or lower rate or fare to be thereafter charged. In determining the rates and fares to be charged or the service to be furnished or the necessity of extension of an existing route or routes, the commissioner may consider all facts which have any bearing upon a proper determination of the question although not set forth in the complaint and not within the allegations contained therein, with due regard among other things to revenue levels that are necessary and adequate under efficient management to cover total operating expenses plus a reasonable profit. At any hearing involving a rate, the burden of proof to show that the change in rate or fare if proposed by the common carrier of passengers by motor vehicle, or that the existing rate or fare, if on motion of the commissioner or in a complaint filed with the commissioner it is proposed to reduce the rate or fare, is just and reasonable shall be upon the common carrier of passengers by motor vehicle and the commissioner may give to the hearing and decision of such questions preference over all other questions pending and decide the same as speedily as possible.

ARTICLE 8

CARRIERS OF PROPERTY BY MOTOR VEHICLE

§ 170. Application of article. This article shall apply to common and contract carriers of property by motor vehicle except common carriers providing transportation of household goods as defined in paragraphs (a) and (b) of subdivision fifteen of section two of this chapter.

§ 171. Exemptions. The provisions of this article shall not apply to the following types of transportation of property by motor vehicle:

1. The transportation of property by or for the federal, state or municipal governments.

2. The occasional, casual or reciprocal transportation of property for compensation by any person not engaged in the transportation of property by motor vehicle as a regular occupation or business.

3. The transportation of property wholly within a municipality or between contiguous municipalities or within a commercial zone as defined by the commissioner except when such transportation is under a common control, management or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities or commercial zone.

4. The transportation of fresh fish, live fowl and ordinary livestock except those used for exhibition or racing purposes.

5. The transportation in motor vehicles used exclusively for carrying fertilizers, soil conditioners, forestry products and agricultural commodities other than manufactured products thereof.

6. The transportation of livestock and poultry feed and feed ingredients and agricultural seeds and plants, if such products are transported to a site of agricultural production or to a business enterprise engaged in the sale to agricultural producers of goods used in agricultural production.

7. The transportation of newspapers, magazines or periodicals.

8. The transportation of property in private carriage when such transportation is incidental to and in furtherance of a primary business or farming enterprise of such person other than transportation.

9. The transportation of sand, gravel, dirt, debris, road materials, ready-mixed concrete and similar commodities when transported in dump trucks and when unloaded by being dumped.

10. The transportation of wrecked or disabled vehicles by the tow-away method.

11. The transportation by motor vehicles controlled and operated by a cooperative corporation as defined in the cooperative corporations law when such transportation activities are related to the members of the cooperative corporation.

12. The transportation of milk from the farm or farms where produced or from collection stations where milk is gathered from various farms.

13. The transportation for compensation performed by an agricultural cooperative corporation for non-members who are not farmers or cooperative corporations when such transportation is limited to that which is incidental to the agricultural cooperative corporation's primary transportation operation and is necessary for its effective performance. Such transportation shall be provided only after the agricultural cooperative corporation notifies the commissioner in writing of its intent to provide the transportation and it shall not exceed twenty-five percent of the agricultural cooperative corporation's total transportation services in each calendar year measured in terms of tonnage. The commissioner may prescribe the records to be kept and the information to be furnished by all agricultural cooperative corporations performing transportation pursuant to this subdivision.

§ 172. Certificate and permit requirement. 1. No person or persons shall engage in intrastate transportation as a common carrier of property by motor vehicle on any highway in this state or hold themselves out by advertising or any other means to provide such transportation unless there is in force with respect to such person or persons a certificate issued by the commissioner.

2. No person or persons shall engage in intrastate transportation as a contract carrier of property by motor vehicle on any highway in this state or hold themselves out by advertising or any other means to provide such transportation unless there is in force with respect to such person or persons a permit issued by the commissioner.

3. Applications for certificates or permits shall be made in writing to the commissioner, be verified under oath, and shall be in such form and contain such information as the commissioner by regulation may require. The commissioner shall provide for publication of a notice of the application to all interested parties.

§ 173. Issuance of temporary authority. 1. A temporary certificate or permit to operate as a common or contract carrier of property may be issued by the commissioner to a qualified applicant with or without a hearing for the purpose of providing a service for which there is an immediate or urgent need from or to a point or points or within a territory. Applications for temporary authority shall contain such information as the commissioner by regulation may prescribe.

2. Temporary authority as a common or contract carrier of property shall:

(a) create no presumption that corresponding permanent authority be granted;

(b) confer no proprietary or property rights in the use of the highways;

(c) be granted for a period not to exceed six months, which may be renewed by the commissioner for good cause shown; and

(d) be subject to any conditions deemed to be appropriate by the commissioner.

3. Notwithstanding any other provision of law, if the commissioner determines that, due to emergency conditions, there is not sufficient time to process an application for temporary authority under this section, the commissioner may grant emergency temporary authority pursuant to such conditions and regulations that may be prescribed by

the commissioner. Unless suspended or revoked, such emergency temporary authority shall be granted for not more than thirty days.

§ 174. Issuance of permanent certificate. 1. A permanent certificate to operate as a common carrier of property may be issued by the commissioner to a qualified applicant with or without hearing, but upon notice to all interested parties, authorizing such applicant to provide transportation as a common carrier of property. Applications for a permanent certificate shall contain such information as the commissioner by regulation may prescribe. The application for a permanent certificate shall be granted if the commissioner finds that:

(a) the applicant is fit, willing and able to provide the transportation to be authorized by the certificate and to comply with this chapter and the regulations of the commissioner; and

(b) that the service proposed will be required by the present or future public convenience and necessity.

2. The provisions of paragraph (b) of subdivision one of this section shall not apply to applications for authority to provide transportation of shipments weighing one hundred pounds or less when transported in a motor vehicle in which no one package exceeds one hundred pounds.

3. No permanent certificate issued under this section shall confer any proprietary or property rights in the use of the highways.

§ 175. Issuance of permanent permit. 1. A permanent permit to operate as a contract carrier of property may be issued by the commissioner to an applicant with or without hearing, but upon notice to all interested parties authorizing such applicant to provide transportation as a contract carrier of property. The application for a permanent permit shall be granted if the commissioner finds that:

(a) the applicant is fit, willing and able to provide the transportation to be authorized and to comply with this chapter and the regulations of the commissioner; and

(b) the proposed service to the extent authorized will be consistent with the public interest and the policy declared in section one hundred thirty-seven of this chapter.

2. No permit issued under this article shall confer any proprietary or property rights in the use of the highways.

§ 176. Holding certificates and permits. No person may at the same time hold a certificate as a common carrier and a permit as a contract carrier authorizing operation for the transportation of property by motor vehicle within the same territory, unless for good cause shown, the commissioner shall find that holding such certificate and permit is consistent with the transportation policy declared in section one hundred thirty-seven of this chapter.

§ 177. Amendment, revocation and transfer of certificates and permits. 1. Certificates and permits shall be effective from the date specified therein, and shall remain in effect until terminated as herein provided. Any such certificate or permit may, upon application of the holder and in the discretion of the commissioner, be amended or revoked, in whole or in part, or may be suspended, cancelled, revoked or modified pursuant to section one hundred forty-five of this chapter.

2. Any certificate or permit may be suspended by the commissioner without hearing for failure to file or keep in force a tariff or a contract as required by sections one hundred seventy-nine and one hundred eighty of this article; for failure to comply with the insurance requirements of section one hundred thirty-nine of this chapter; for failure to file annual reports as required by the regulations of the commissioner; or for failure to adhere to the safety requirements of section one hundred forty of this chapter. Any such certificate or permit so suspended may thereafter be revoked in no less than thirty days after the date of suspension ordered by the commissioner without hearing if the carrier does not comply with the tariff, contract, insurance, annual reporting or safety requirements.

3. Certificates or permits shall not be assigned, transferred or leased in any manner nor shall the right to operate under any certificate or permit be leased without prior approval of the commissioner, upon such notice as the commissioner shall deem appropriate. The assignment, transfer or lease of a certificate, or the right to operate under any certificate, shall not be approved unless the commissioner shall find that it is in the public interest to do so. All applications for assignment, transfer or lease must be in such form as prescribed by the commissioner.

§ 178. Rates and charges; common carriers. 1. It shall be the duty of every common carrier of property to establish, observe and enforce just and reasonable rates, charges and classifications, and just and reasonable regulations and practices relating thereto.

2. Common carriers of property by motor vehicle may establish through routes and joint rates, charges and classifications with other such carriers and once established it shall be the duty of all such carrier parties to establish just and reasonable rates, charges, classifications, regulations and practices and equitable divisions of revenue.

3. All charges made for any service rendered, or to be rendered by any common carrier of property by motor vehicle, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any common carrier to make, give or cause any undue or unreasonable preference or advantage to any particular persons, in any respect whatsoever; or to subject any particular person to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

4. Whenever, after a hearing, upon complaint, or in an investigation on the commissioner's own initiative, the commissioner shall determine that any individual or joint rate, charge or classification in effect or proposed to be put into effect by any common carrier or group of common

carriers of property by motor vehicle or any rule, regulation or practice whatsoever affecting such rate, charge or classification, or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory, unduly preferential or unduly prejudicial, the commissioner shall determine and prescribe the lawful rate, charge or classification, or the lawful rule, regulation or practice thereafter to be observed.

5. The commissioner shall, whenever deemed by him to be necessary or desirable in the public interest, after a hearing, upon complaint, or upon the commissioner's own initiative, establish through routes and joint rates, charges, classifications, regulations or practices, applicable to the transportation of property by common carriers and the terms and conditions under which such through routes shall be operated.

6. Whenever, after a hearing, upon complaint or upon the commissioner's own initiative, the commissioner determines that the divisions of joint rates, charges or classifications applicable to the transportation of property by common carriers are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carrier parties, the commissioner shall by order prescribe the just, reasonable and equitable divisions thereof. The order of the commissioner may require the adjustment of divisions between the carriers, in accordance with the order, from the date of filing the complaint or entry of order of investigation, or such other date subsequent as the commissioner finds justified and, in the case of joint rates, charges or classifications prescribed by the commissioner, the order as to divisions may be made effective as a part of the original order.

7. In proceedings to determine the reasonableness of rates, charges or classifications of a common carrier of property or group of common carriers of property, the commissioner shall authorize revenue levels that are adequate under efficient management to cover total operating expenses, plus a reasonable profit as determined by the commissioner.

8. The commissioner may not investigate, suspend, revise or revoke any

rate or charge proposed by a carrier if the proposed rate does not increase or reduce any existing rate or charge by more than ten percent in any twelve month period. This subdivision does not apply to rates that are proposed through the collective actions of the members of a rate conference.

9. Any rate or charge that in any twelve-month period is increased or reduced by more than the percentage specified in subdivision eight of this section must be accompanied by such financial, statistical, cost and other data as the commissioner may prescribe by regulation to justify such change. Any such rate or charge is subject to investigation, suspension, revision or revocation.

§ 179. Tariff requirements; common carriers. 1. No common carrier of property by motor vehicle shall engage in such transportation unless the rates and charges of said carrier have been prescribed, or filed in accordance with the provisions of this article.

2. Whenever an applicable tariff has not already been prescribed by the commissioner every common carrier of property by motor vehicle shall file with the commissioner and at all times keep open to public inspection tariffs showing all the rates and charges for transportation, and all services in connection therewith, between points on its own route and points on the route of any other such carrier, or on the routes of any other common carrier by motor vehicle, when a through route and joint rate shall have been established. Such rates and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed and posted in such form and manner and shall contain such information as the commissioner by regulation shall prescribe and the commissioner is authorized to reject any tariff which is not in accordance with this article and with such regulations. Any such tariff so rejected by the commissioner shall be void and its use shall be unlawful.

3. No common carrier of property by motor vehicle shall charge, demand, collect or receive a different compensation for transportation

or for any service in connection therewith between points enumerated in such tariff than the rates and charges specified in the tariffs in effect at the time of shipment and no such carrier shall refund or remit in any manner or by any device, directly or indirectly, or through any agent or broker or otherwise, any portion of the rates or charges so specified, nor extend to any person any privilege for transportation except as is specified in its tariff.

4. No change shall be made in any rate, charge or classification, or the value of the service thereunder, specified in any effective tariff of a common carrier, except after thirty days' notice of the proposed change filed and posted in accordance with the rules and regulations prescribed by the commissioner. The commissioner may for good cause shown, allow such change upon less than thirty days' notice or modify the requirements of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to special or particular circumstances or conditions.

5. Except as provided for in subdivision eight of section one hundred seventy-eight of this article, the commissioner may suspend the implementation of any proposed tariff change and defer the use of such tariff change for a period of six months. After investigation and hearing, the commissioner may allow the tariff change as proposed or he may issue an order directing the carrier to cancel or modify the proposed tariff change. Provided, however, that if a decision is not rendered within the six month suspension period the proposed tariff change shall go into effect at the end of such suspension period. In any hearing to determine the reasonableness or lawfulness of a proposed tariff change the burden of proof shall be on the carrier or carriers proposing the tariff change.

§ 180. Rates and charges; contract carriers. 1. No contract carrier of property by motor vehicle shall engage in such transportation unless a copy of the contract and copies of any amendments to that contract are filed with the commissioner in accordance with any rules and regulations that the commissioner may prescribe.

2. No contract carrier of property by motor vehicle shall charge, demand, collect or receive a different compensation for transportation or for any service in connection therewith than the rates and charges specified in the contract in effect and on file with the commissioner at the time of shipment and no such carrier shall refund or remit in any manner or by any device, directly or indirectly, or through any agent or broker or otherwise, any portion of the rates or charges so specified, nor extend to any person any privilege for transportation except as is specified in its contract.

3. Initial, first time, contracts shall be published and filed with at least one day's notice to the commissioner and must be in accordance with the rules and regulations that may be prescribed by the commissioner.

4. No reduction shall be made in any rate, charge, or classification, or the value of the service thereunder in any contract except after at least thirty days' notice of the proposed change filed and posted in accordance with the rules and regulations that may be prescribed by the commissioner. The commissioner may for good cause shown, allow changes on less than thirty days notice or modify the requirements of this section either in particular instances or by general order applicable to special or particular circumstances or conditions.

5. Whenever, after a hearing, upon complaint or on the commissioner's own initiative, the commissioner finds that any charge of any contract carrier or contract carriers is unreasonably low or any rule, regulation or practice of any such carrier or carriers affecting such charge, or the value of the service thereunder results in an unreasonably low charge, the commissioner may prescribe such charge or such rule, regulation or practice as the commissioner determines may be necessary or desirable in the public interest. All complaints filed under this subdivision shall state fully the facts complained of and the reason for such complaint and shall be made under oath.

6. Whenever there shall be filed with the commissioner by any such

contract carrier any contract or amendment to a contract stating a reduced charge, or which has the effect of reducing a charge by means of any rule, regulation or practice, the commissioner may, upon complaint or on the commissioner's own initiative, suspend and defer the implementation in part or in whole of any such contract or contract amendment for a period of six months. After investigation and hearing, the commissioner may allow the suspended matter as proposed or issue an order directing the carrier to cancel or modify the proposed contract or contract amendment. Provided, however, that if a decision is not rendered within the six month suspension period the proposed contract or amendment shall go into effect at the end of such suspension period. In any hearing to determine the reasonableness or lawfulness of a proposed reduction the burden of proof shall be on the carrier or carriers proposing the reduction.

§ 181. Liability for damage to property in transit. Every common carrier of property by motor vehicle shall, upon demand, issue either a receipt or a bill of lading for all property delivered to it for transportation. No contract, stipulation or clause in any receipt or bill of lading shall exempt any common carrier of property by motor vehicle from any liability for loss, damage or injury caused by it to property from the time of its delivery for transportation until the same shall have been received at its destination and a reasonable time shall have elapsed after notice to the consignee of such arrival to permit the removal of such property and inspection; provided, however, that when expressly authorized or required by order of the commissioner a carrier may establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released and shall not, so far as relates to values, be held to violate this article. Every common carrier of property by motor vehicle shall be liable for all loss, damage or injury to property caused by delay in transit due to negligence while the same is being carried by it, but in any action to recover for damages sustained by delay in transit the burden of proof shall be upon the defendant to show that such delay was not due to negligence. Nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which such holder has under existing law.

ARTICLE 9

CARRIERS OF HOUSEHOLD GOODS

BY MOTOR VEHICLE

§ 190. Application of article. This article shall apply to common carriers of property by motor vehicle transporting household goods. The provisions of this article shall not apply to:

(a) the transportation of household goods by or for the federal, state or municipal governments;

(b) the occasional, casual or reciprocal transportation of household goods by any person not engaged in the transportation of household goods as a regular occupation or business;

(c) the transportation of household goods as defined in paragraph (c) of subdivision fifteen of section two of this chapter when such transportation is wholly within a municipality or between contiguous municipalities or within a commercial zone as defined by the commissioner that is adjacent to and commercially a part of any municipality or municipalities except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment by motor vehicle to or from a point outside of such municipality, municipalities or commercial zone;

(d) the transportation of household goods as defined in paragraph (c) of subdivision fifteen of section two of this chapter when such transportation is performed by a common or contract carrier of property by motor vehicle authorized to transport such articles pursuant to article eight of this chapter; or

(e) the transportation of household goods in private carriage when such transportation is incidental to and in furtherance of a primary business enterprise of such person other than transportation.

§ 191. Certificate requirement. 1. No person or persons shall engage in intrastate transportation as a common carrier of household goods by motor vehicle on any highway in this state, or hold themselves out by advertising or any other means to provide such service, unless there is in force with respect to such person a certificate issued by the commissioner.

2. Applications for certificates shall be made in writing to the commissioner, be verified under oath, and shall be in such form and contain such information as the commissioner by regulation may require. The commissioner shall provide for publication of a notice of the application to all interested parties.

§ 192. Probationary certificate. 1. A probationary certificate to operate as a common carrier of household goods by motor vehicle may be issued by the commissioner to a qualified applicant after public notice and with or without hearing. The application shall contain such information as the commissioner by regulation shall prescribe. A probationary certificate shall:

(a) create no presumption that a corresponding permanent certificate will be granted;

(b) confer no proprietary or property rights in the use of the highways;

(c) be granted for a period not to exceed one year, which may be renewed for an additional one year period by the commissioner; and

(d) be subject to any conditions deemed appropriate by the commissioner to be in the public interest.

2. The commissioner shall issue a probationary certificate to a person authorizing that person to provide transportation of household goods by motor vehicle if the commissioner finds that the applicant is fit, willing and able to provide the transportation authorized by the probationary certificate and to comply with this chapter and the regulations of the commissioner. Unless an applicant proposes to provide service in a more limited geographic area, a probationary certificate issued pursuant to this section will entitle the holder thereof to provide service as a common carrier of household goods between all points within a base region which shall consist of each county wherein the applicant maintains a bona fide place of business and all adjoining counties; and, between all points within the base region, as described above, on the one hand, and, on the other, all points in the state. For the purposes of this section, the counties of Bronx, Kings, New York, Queens and Richmond shall be considered as one county.

3. Probationary certificates may be revoked, renewed or converted into a permanent certificate by the commissioner with or without hearing when the commissioner deems it in the public interest to do so.

4. Protests to applications for a probationary certificate will be limited to evidence on the applicant's fitness to provide service.

5. A probationary certificate may not be assigned, transferred or leased in any manner.

§ 193. Permanent certificate. 1. A permanent certificate to operate as a common carrier of household goods by motor vehicle may be issued by the commissioner after notice and with or without hearing to a carrier which has held a probationary certificate for at least six months if the commissioner determines that the holder is fit, willing and able to hold a permanent certificate.

2. In determining whether to grant or deny a permanent certificate pursuant to subdivision one of this section, the commissioner shall consider the carrier's actual operating experience while holding a probationary certificate and the manner in which that carrier has conducted itself with the public. Protests to the grant of a permanent certificate pursuant to subdivision one of this section shall be limited to evidence on the carrier's fitness to provide service.

3. Unless an applicant proposes to provide service in a more limited geographic area, a permanent certificate issued pursuant to subdivision one of this section will entitle the holder thereof to provide service as a common carrier of household goods by motor vehicle between all points within a base region which shall consist of each county wherein the applicant maintains a bona fide place of business and all adjoining counties; and, between all points within the base region, as described above, on the one hand, and, on the other, all points in the state. For the purposes of this section, the counties of Bronx, Kings, New York, Queens and Richmond shall be considered as one county.

4. A permanent certificate to operate as a common carrier of household goods by motor vehicle in a broader geographic area than specified in subdivision three of this section may be issued by the commissioner after public notice and with or without hearing if the commissioner finds that:

(a) the applicant is fit, willing and able to provide the transportation to be authorized by the certificate and to comply with this chapter and the regulations of the commissioner; and

(b) that the service proposed will be required by the present or future public convenience and necessity.

5. Persons holding a permanent certificate will be subject to a continuing requirement of being fit, willing and able and if, after notice and hearing, the commissioner finds that any person holding a permanent certificate under this article is willfully failing to comply with the continuing fit, willing and able requirement, the commissioner

may suspend or revoke the permanent certificate in whole or in part.

6. Permanent certificates issued pursuant to subdivision one of this section shall have no application fee.

7. Permanent certificates shall not confer any proprietary or property rights in the use of the highways.

§ 194. Agents. 1. Each motor carrier providing transportation of household goods subject to this article, and any agent or agents employed or utilized by it, shall be jointly and severally liable for any act or omission or for any violation of this chapter or any order or regulation of the commissioner in connection with household goods transportation subject to the jurisdiction of the commissioner.

2. It shall be unlawful for any motor carrier providing transportation of household goods to employ any person or motor carrier as an agent who or which is not the lawful holder of an effective probationary or permanent certificate to operate as a common carrier of household goods under this article.

3. The provisions of section three hundred forty of the general business law shall not apply to discussions or agreements between a motor carrier providing transportation of household goods subject to the jurisdiction of the commissioner under this chapter and its agents related solely to:

(a) rates for the transportation of household goods under the authority of the principal carrier;

(b) accessorial, terminal, storage, or other charges for services incidental to the transportation of household goods transported under the authority of the principal carrier;

(c) allowances relating to the transportation of household goods under the authority of the principal carrier; and

(d) ownership of a motor carrier providing transportation of household goods subject to the jurisdiction of the commissioner under this chapter by an agent, or membership on the board of directors of any such motor carrier by an agent.

§ 195. Amendment, revocation and transfer of certificates and permits. 1. Certificates shall be effective from the date specified therein, and shall remain in effect until terminated as herein provided. Any such certificate may, upon application of the holder thereof and in the discretion of the commissioner, be amended or revoked, in whole or in part, or may be suspended, cancelled, revoked or modified pursuant to section one hundred forty-five of this chapter.

2. Any certificate may be suspended by the commissioner without hearing for failure to keep in force a tariff as required by section one hundred ninety-seven of this chapter; for failure to comply with the insurance requirements of section one hundred thirty-nine of this chapter; for failure to file annual reports as required by the regulations of the commissioner; or for failure to adhere to the safety requirements of section one hundred forty of this chapter. Any such certificate so suspended may thereafter be revoked in no less than thirty days after the date of suspension ordered by the commissioner without hearing, if the carrier does not comply with the tariff, insurance, annual reporting or safety requirements.

3. Permanent certificates shall not be assigned, transferred or leased in any manner nor shall the right to operate under any such certificate be leased without prior approval of the commissioner upon such notice as the commissioner shall deem appropriate. The assignment, transfer or lease of a permanent certificate, shall not be approved unless the commissioner shall find that it is in the public interest to do so. All applications for transfer or lease must be in such form as prescribed by the commissioner.

§ 196. Rates and charges; common carriers of household goods. 1. It shall be the duty of every common carrier of household goods to establish, observe and enforce just and reasonable rates, charges and classifications, and just and reasonable regulations and practices relating thereto.

2. Common carriers of household goods by motor vehicle may establish through routes and joint rates, charges and classifications with other such carriers and once established it shall be the duty of all such carrier parties to establish just and reasonable rates, charges, classifications, regulations and practices and equitable divisions of revenue.

3. All charges made for any service rendered, or to be rendered by any common carrier of household goods by motor vehicle, shall be just and reasonable and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any common carrier of household goods to make, give or cause any undue or unreasonable preference or advantage to any particular persons, in any respect whatsoever or to subject any particular person, area or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

4. Whenever, after a hearing, upon complaint, or in an investigation on the commissioner's own initiative, the commissioner shall determine that any individual or joint rate, charge or classification in effect or proposed to be put into effect by any common carrier of household goods or group of common carriers of household goods by motor vehicle or any rule, regulation or practice whatsoever affecting such rate, charge or classification, or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory, unduly preferential or unduly prejudicial, the commissioner shall determine and prescribe the lawful rate, charge or classification, or the lawful rule, regulation or practice thereafter to be observed.

5. The commissioner shall, whenever deemed necessary or desirable in the public interest, after a hearing, upon complaint, or upon his own initiative, establish through routes and joint rates, charges, classifications, regulations or practices, applicable to the transportation of property by common carriers of household goods and the

terms and conditions under which such through routes shall be operated.

6. Whenever, after a hearing, upon complaint or upon the commissioner's own initiative, the commissioner determines that the divisions of joint rates, charges or classifications applicable to the transportation of household goods by common carriers are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carrier parties, the commissioner shall by order prescribe the just, reasonable and equitable divisions thereof. The order of the commissioner may require the adjustment of divisions between the carriers, in accordance with the order, from the date of filing the complaint or entry of order of investigations, or such other date subsequent as the commissioner finds justified and, in the case of joint rates, charges or classifications prescribed by the commissioner, the order as to divisions may be made effective as a part of the original order.

7. In proceedings to determine the reasonableness of rates, charges or classifications of a common carrier of household goods or group of common carriers of household goods, the commissioner shall authorize revenue levels that are adequate under efficient management to cover total operating expenses, plus a reasonable profit as determined by the commissioner.

8. The commissioner may not investigate, suspend, revise or revoke any rate or charge proposed by a carrier if the proposed rate does not increase or reduce any existing rate or charge by more than ten percent in any twelve-month period. This subdivision does not apply to rates that are proposed through the collective actions of the members of a rate conference.

9. Any rate or charge that in any twelve-month period is increased or reduced by more than the percentage specified in subdivision eight of this section must be accompanied by such financial, statistical, cost and other data as the commissioner may prescribe by regulation to justify such change. Any such rate or charge is subject to investigation, suspension, revision or revocation.

10. Prior to entering into an agreement to render services, every common carrier of household goods shall inform each shipper of the availability of a written estimate of the total cost of services if requested at least seventy-two hours in advance of an actual move. If so requested by a shipper, every common carrier of household goods shall issue to each shipper an estimated total cost of services form which shall not serve as the actual contract between the shipper and such carrier but shall be given as an educated prediction of the total cost for services to be rendered, except that such estimate shall not be required for moves of household goods involving one room of four hundred square feet or less. The estimate for all services provided shall be in writing and shall be fully completed in all respects, and shall be rendered only after a physical examination by the carrier. The commissioner shall promulgate a sample estimated cost of services form and each carrier may adopt any form substantially similar to the said form, which shall also include a statement, in bold face type, indicating that the tariff in effect at the time of the shipment shall govern the final charges for the shipment. In addition to specific rates and charges required to be filed pursuant to section one hundred ninety-seven of this article, a common carrier of household goods may also offer shippers a written binding estimate of the total transportation charges for the transportation of household goods as defined in paragraphs (a) and (b) of subdivision fifteen of section two of this chapter. Provided, however, that if a carrier elects to offer written binding estimates it must specifically state so in its tariff and must make such option available on a nonpreferential basis to all shippers as an alternative to the specific rates and charges detailed in its tariff. The written binding estimate shall be in the form and contain such information as the commissioner may prescribe by regulation.

§ 197. Tariff requirements; common carriers of household goods. 1. No common carrier of household goods by motor vehicle shall engage in such transportation unless the rates and charges of said carrier have been prescribed, or filed in accordance with the provisions of this article.

2. Whenever an applicable tariff has not already been prescribed by the commissioner every common carrier of household goods by motor vehicle shall file with the commissioner and at all times keep open to public inspection tariffs showing all the rates and charges for transportation, and all services in connection therewith, between points on its own route and points on the route of any other such common carriers of household goods, or on the routes of any other common carrier of household goods by motor vehicle, when a through route and joint rate shall have been established. Such rates and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed and posted in such form and manner and shall contain such information as the commissioner by regulation shall prescribe and the commissioner is authorized to reject any tariff which is not in accordance with this article and with such regulations. Any such tariff so rejected by the commissioner shall be void and its use shall be unlawful.

3. No common carrier of household goods by motor vehicle shall charge, demand, collect or receive a different compensation for transportation or for any service in connection therewith between points enumerated in such tariff than the rates and charges specified in the tariffs in effect at the time of shipment and no such common carrier of household goods shall refund or remit in any manner or by any device, directly or indirectly, or through any agent or broker or otherwise, any portion of the rates or charges so specified, nor extend to any person any privilege for transportation except as is specified in its tariff.

4. No change shall be made in any rate, charge or classification, or the value of the service thereunder, specified in any effective tariff of a common carrier of household goods, except after thirty days' notice of the proposed change filed and posted in accordance with the rules and regulations prescribed by the commissioner. The commissioner may for good cause shown, allow such change upon less than thirty days' notice or modify the requirements of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to special or particular circumstances or conditions.

5. Except as provided for in subdivision eight of section one hundred ninety-six of this article the commissioner may suspend the implementation of any proposed tariff change and defer the use of such tariff change for a period of six months. After investigation and hearing the commissioner may allow the tariff change as proposed or he may issue an order directing the carrier to cancel or modify the proposed tariff change. Provided, however, that if a decision is not rendered within the six month suspension period the proposed tariff change shall go into effect at the end of such suspension period. In any hearing to determine the reasonableness or lawfulness of a proposed tariff change the burden of proof shall be on the carrier or carriers proposing the tariff change.

§ 198. Dispute settlement. 1. One or more motor carriers providing transportation of household goods subject to the jurisdiction of the commissioner or an industry association or associations representing motor carriers providing transportation of household goods shall be encouraged by the commissioner to establish a program to settle disputes between such carriers and shippers of household goods concerning the transportation of household goods. Applications to establish such programs shall be submitted to the commissioner under such rules and regulations as the commissioner may promulgate. No such program shall become effective until approved by the commissioner. Any carrier that does not establish its own program to settle disputes or join a dispute settlement program of an industry association shall submit disputes with shippers to an alternative mechanism or mechanisms for resolving disputes sanctioned by the commissioner pursuant to rules and regulations.

2. The commissioner may investigate at any time the functioning of any program approved under this section and, after notice and an opportunity for a hearing, may suspend or revoke the approval of such program.

3. No program for settling disputes concerning the transportation of household goods may be approved under this section unless the

commissioner finds that such program contains adequate protection for the consumer and that the program establishes an expeditious process for the handling and resolution of disputes.

§ 198-a. Enforcement. The department shall enforce this article and any rules or regulations promulgated pursuant thereto. The attorney general, in response to a request by the commissioner or a complaint from a consumer, or on the attorney general's own initiative, may seek equitable relief to restrain any violation or threatened violation of section one hundred ninety-one of this article requiring certification of common carriers of household goods or any rules or regulations promulgated pursuant to such section. Whenever there shall be a violation of section one hundred ninety-one of this article or any rule or regulation promulgated pursuant thereto, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation or to enforce the provisions of such section or such rules and regulations. If it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated section one hundred ninety-one of this article or any rules or regulations promulgated pursuant thereto, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby.

In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of section one hundred ninety-one of this article or any rules or regulations promulgated pursuant to such section has occurred, the court may also impose a civil penalty of up to one thousand dollars for each violation. In connection with any such proposed application, the attorney general may take proof and make a determination of the relevant facts and issue subpoenas in accordance with the civil practice law and rules.

§ 199. Liability for damage to property in transit. Every common carrier of household goods by motor vehicle shall, upon demand, issue a bill of lading for all property delivered to it for transportation. No contract, stipulation or clause in any bill of lading shall exempt any common carrier of household goods by motor vehicle from any liability for loss, damage or injury caused by it to property from the time of its delivery for transportation until the same shall have been received at its destination and a reasonable time shall have elapsed after notice to the shipper of such arrival to permit the removal and inspection of such property; provided, however, that a carrier may limit such liability to the value declared in writing by the shipper or agreed upon in writing by the carrier and the shipper as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released and shall not, so far as relates to values, be held to violate this article. Every common carrier of household goods by motor vehicle shall be liable for all loss, damage or injury to property caused by delay in transit due to negligence while the same is being carried by it, but in any action to recover for damages sustained by delay in transit the burden of proof shall be upon the defendant to show that such delay was not due to negligence. Nothing in this section shall deprive any holder of such bill of lading of any remedy or right of action which such holder has under existing law.

ARTICLE 9-A

HOURS OF LABOR OF OPERATORS OF MOTOR TRUCKS AND MOTOR BUSES

§ 210. Application of this article. The term "motor truck" as used in this article shall be deemed to mean and include any commercial motor vehicle held and used for the transportation of goods, wares and merchandise for hire or for a business purpose, pursuant to the rules and regulations of the commissioner. The term "motor bus" as used in this article shall be deemed to mean and include any commercial motor vehicle held and used for the transportation of passengers for hire or for a business purpose, pursuant to the rules and regulations of the commissioner.

§ 211. General provisions. No driver of a motor truck or motor bus shall drive such vehicle or be on duty for any period of time in excess of that authorized pursuant to regulation of the commissioner. The commissioner is hereby authorized to promulgate rules and regulations governing the hours of service of drivers of motor trucks and motor buses. Such rules and regulations shall be no less protective of public safety than the rules and regulations promulgated by the federal government with respect to hours of labor of operation of motor trucks and motor buses, provided, however, that with regard to drivers of motor buses operated by a public transportation authority operating exclusively within its jurisdictional area, the rules and regulations of the commissioner shall provide that no driver of such motor buses shall drive more than twelve hours following eight consecutive hours off duty and no driver of such motor buses shall drive for any period after having been on duty for fifteen hours following eight consecutive hours off duty and every driver of such motor buses shall have at least twenty-four consecutive hours off duty in every period of seven consecutive days and in no event shall such a driver be on duty for more than seventy-five hours in any period of seven consecutive days.

§ 212. Records. Every driver of a motor truck or motor bus shall keep and carry on the vehicle records showing the day and hour when and the place where he went and was released from duty, whether in this state or outside of this state. The commissioner shall prescribe the form of such records and may require such other information to be shown thereon as he shall deem advisable to insure the proper enforcement of this article. Such records shall be exhibited to the commissioner, his representatives, or to any peace officer, acting pursuant to his special duties or police officer who shall demand to see the same and shall be held available for further inspection for a period of sixty days within the state of New York in an office designated by the owner. Failure to produce such records upon demand shall be presumptive evidence of a violation of this article relating to keeping such records. In any prosecution for the violation of any of the provisions of this article such records shall be prima facie evidence of the truth of the contents thereof.

§ 213. Penalties; enforcement. Any person violating the provisions of this article or failing to keep or falsifying any records to be kept in compliance therewith, or any corporation, company, association, joint-stock association, partnership, person or any officer or agent thereof, who shall require or permit any person to violate the provisions of this article or to falsify any record to be kept in compliance therewith shall be guilty of a misdemeanor and punishable by a fine of two hundred dollars, or by imprisonment not exceeding six months, or both. It shall be the duty of the commissioner, all peace officers, acting pursuant to their special duties, and all police officers, and they are hereby authorized, empowered, and required to enforce the provisions of this article.

§ 214. Exemptions. a. The commissioner shall adopt rules and regulations establishing when the provisions of this article shall not apply, which rules and regulations shall conform, as applicable, to paragraphs (b) through (r) of section 395.1 of title 49 of the code of federal regulations as such regulations may be amended from time to time.

b. Notwithstanding the provisions of subdivision a of this section, the provisions of this article shall not apply to the operation of a motor truck in intrastate commerce owned by a farmer and operated by himself or an employee when used in the hauling of farm, dairy, or horticultural products and farm supplies for himself or his farm neighbors to market, creamery, or place of storage, nor to the operation of tow trucks in intrastate commerce while responding to requests to provide roadside service or to remove wrecked, disabled, abandoned or illegally parked motor vehicles.

c. The provisions of this article shall not apply nor shall hours of service accrue to a driver of a utility service vehicle. For purposes of this article, utility service vehicle means any motor truck:

(1) Used in the furtherance of repairing, maintaining, or operating any structures or any other physical facilities necessary for the delivery of public utility services, including the furnishing of electric, gas or steam service, water, sanitary sewer, telephone, and television cable or community antenna service;

(2) While engaged in any activity necessarily related to the ultimate delivery of such public utility services to consumers, including travel or movement to, from, upon, or between activity sites (including occasional travel or movement outside the service area necessitated by any utility emergency as determined by the utility provider); and

(3) Except for any occasional emergency use, operated primarily within the service area of a utility's subscribers or consumers, without regard to whether the vehicle is owned, leased, or rented by the utility.

ARTICLE 9-B

STATE PUBLIC TRANSPORTATION SAFETY BOARD

§ 215. Legislative findings. The legislature hereby finds and declares that the state has a responsibility to insure the safety of public transportation systems. Further, there exists a need for an independent, investigative and advisory body to examine the causes of accidents on public transportation systems and make recommendations in order to prevent the occurrences of accidents and promote the safety of the public. Therefore, this article establishes a public transportation safety board to provide this protection and insure the health and safety of the citizens of the state who use public transportation facilities.

§ 216. State public transportation safety board. 1. There is hereby created in the department a board, to be known as the state public transportation safety board. Such board shall be responsible for the investigation of accidents involving public transportation in the state, including commuter rail, subways, rapid transit and buses. The board shall also be responsible for the presentation of recommendations to all public transportation operators and carriers to prevent the occurrence of future accidents. Such board shall consist of the commissioner and six other members, no more than three of whom shall belong to the same political party. Two of the members of the board shall be selected by the governor from a list submitted by the temporary president of the senate and two from a list submitted by the speaker of the assembly. The remaining two members shall be selected by the governor. One from each category of selected members shall have competence and experience in connection with the operation, design or management of public transportation facilities and systems. Three of the members, other than the commissioner, shall be from the metropolitan transportation authority region and three members shall be from areas of the state outside such region. All appointees to the board other than the commissioner shall be upon the advice and consent of the senate. The metropolitan transportation authority inspector general shall be an ex officio member of the board but shall have no vote on matters arising outside of the operations of the metropolitan transportation authority. Provided, however, that with the exception of the commissioner, no elected or appointed public officer or transportation authority member shall be eligible for membership on such board. The governor shall select a chairman from the members but the chairman shall be someone other than the metropolitan transportation authority inspector general.

2. The board may be called to investigate any accident by the governor or chairman. Alternatively, any board member may call for an investigation with majority board concurrence.

3. Except for the commissioner and the metropolitan transportation authority inspector general, the term of office of each such member shall be six years, except that the members first selected shall serve for terms of six years, five years, four years, three years, two years and one year, respectively. Any member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the remainder of the unexpired term.

4. Members of the board, except the commissioner and the metropolitan transportation authority inspector general, shall receive one hundred fifty dollars per diem, not to exceed ten thousand dollars per annum compensation for their services as members of the board, and each of them shall be allowed the necessary and actual expenses which he shall incur in the performance of his duties under this article.

§ 217. Powers and duties of the board. The board shall have the following powers and duties:

1. To investigate accidents occurring on or involving public transportation facilities or systems whether publicly or privately owned and report on the results of such investigations;

2. To establish within the board an accident reporting procedure and file for the purpose of accurate analysis of public transportation safety and to prepare an annual accident report for the governor and the legislature;

3. To review, in connection with the investigation of accidents the

safety, maintenance and training programs of public transportation facilities or systems whether publicly or privately owned and recommend the establishment of equipment and safety standards in connection therewith;

4. To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of this article or to enforce any standards established hereunder;

5. To hold hearings, issue reports, administer oaths or affirmations, examine any person under oath or affirmation and to issue subpoenas requiring the attendance and giving of testimony of witnesses and require the production of any books, papers, documentary or other evidence. The powers provided in this subdivision may be delegated by the board to any member of the board or department employee assigned to the board. A subpoena issued under this subdivision shall be regulated by the civil practice law and rules;

6. To take or cause to be taken affidavits or depositions within or without the state;

7. To enter upon any property where a public transportation accident has occurred, or where a vehicle, appurtenance or other item involved in any such accident is located, to fulfill the requirements of article nine-b of this chapter.

8. To render each year to the governor and to the legislature a written report of its activities.

9. To enforce the requirements of section five thousand three hundred twenty-nine of title forty-nine of the United States Code, as amended from time to time, as it pertains to oversight of rail fixed guideway public transportation systems.

§ 218. Periodic review of safety plans and standards. The board may review and recommend to the public transportation operators and carriers changes in safety standards, public transportation operating practices and safety plans. Public transportation operators and carriers shall review such recommendations and inform the board, within ninety days, whether or not the recommendations have been adopted. If the recommendations have not been adopted, the operator or carriers shall set forth in detail the reason or reasons for not adopting the recommendations.

§ 219. Assistance of other agencies. 1. To effectuate the purposes of this article, the board may request and receive from any department, division, board, bureau, commission or other agency of the state or any political subdivision thereof or any public authority such assistance, information and data as will enable the office properly to carry out its powers and duties hereunder.

2. The board shall cooperate, consult and coordinate with the metropolitan transportation authority inspector general with regard to any activity concerning the operations of the metropolitan transportation authority. With respect to any accident on the facilities of the metropolitan transportation authority, the primary responsibility for investigation shall be that of the board which shall share its findings with the metropolitan transportation authority inspector general.

§ 219-a. Studies; surveys. In the accomplishment of the purposes of this article, the board may undertake research and studies through its own personnel or in cooperation with any public or private agencies, including educational, safety research organizations, colleges, universities, institutes or foundations.

§ 219-b. Grants or gifts. The board, with the approval of the governor, may accept as agent of the state any grant, including federal grants, or any gift for any of the purposes of this article. Any moneys so received may be expended by the board to effectuate any purpose of this article, subject to the same limitations as to approval of expenditures and audit as are prescribed for state moneys appropriated for the purposes of this article.

§ 219-c. Operating authority. As used in this article, the term "metropolitan transportation authority" shall mean the authority and its subsidiaries, the Long Island railroad, metro-north railroad, metropolitan suburban bus authority and Staten Island rapid transit operating authority, of the Triborough bridge and tunnel authority, and of the New York city transit authority and its subsidiary, the Manhattan and Bronx surface transit operating authority, or any other agency that may come under the control of the authority, or within their custody or control.

ARTICLE 10

GRADE CROSSING ELIMINATION

§ 220. Short title. This article shall be known as the "grade crossing elimination act of nineteen hundred seventy." However, sections of the transportation law falling within this article may be cited either as sections of the transportation law or as sections of the "grade crossing elimination act of nineteen hundred seventy."

§ 221. Purpose. This article shall continue the implementation of section fourteen of article seven of the constitution and shall supersede chapter six hundred seventy-seven and chapter six hundred seventy-eight of the laws of nineteen hundred twenty-eight, and all acts supplementary thereto and amendatory thereof, known as the "grade crossing elimination act," and chapter two hundred eighty-nine of the laws of nineteen hundred thirty-nine, and all acts supplementary thereto and amendatory thereof, known as the "grade crossing elimination act of nineteen hundred thirty-nine."

§ 222. Applicability; general provisions of grade crossing elimination. 1. This article shall apply to all highway-railroad grade crossing eliminations the construction work for which is commenced on or after March first, nineteen hundred seventy-one, except that any such projects authorized pursuant to the provisions of the highway law may be constructed in accordance therewith. Construction commenced on highway-railroad grade crossing elimination projects before March first, nineteen hundred seventy-one pursuant to orders of the public service commission shall be completed in accordance with this article.

2. The commissioner shall report not later than December first in each year to the governor, the chairman of the finance committee of the senate and the chairman of the ways and means committee of the assembly, the projects which have been completed during the preceding twelve months, those under construction, those ordered but upon which construction work has not been started, the amount expended on the completed and partially completed work, an estimate of the cost of work not completed and an estimate of the cost of eliminations ordered respecting which no expenditures have been made.

3. The governing body of any municipality in which a highway-railroad grade crossing is located or any railroad company for any railroad

operated by it which has railroad tracks that are crossed at grade by a highway may petition the commissioner to institute grade crossing elimination procedures pursuant to this article. The commissioner shall hold public hearings on any elimination requested by such petition which in his judgment warrants examination. Upon his own motion, the commissioner may investigate any other highway-railroad grade crossing which he determines should be considered for elimination. The commissioner, upon such notice as he shall deem reasonable to the municipality in which the highway-railroad grade crossing is located, the railroad company whose railroad tracks are crossed at grade by the highway and any other party deemed by the commissioner to be interested in the elimination procedure, shall hold public hearings to consider any such elimination. The commissioner shall promulgate rules and regulations concerning the procedure to be followed at such hearings and the matters to be considered at such hearings.

4. After the conclusion of such hearings, the commissioner shall, by order, determine whether it is in the public interest to require the elimination of such highway-railroad grade crossing. Any elimination order shall also determine the manner in which such elimination shall be made including a determination as to the alteration to be made in such crossing, its approaches, the method of crossing, the character of the structure and approaches, the type and extent of pavement, the location of the crossing, the closing and discontinuance of a crossing and the diversion of traffic from an existing crossing to an existing or a new highway, road, street or crossing, or the opening of an additional crossing and also including, if so determined by the commissioner, a change in the location of the railroad when necessary to effect the elimination of such crossing. Whenever the commissioner shall have, by order, determined that it is in the public interest to require the elimination of two or more grade crossings, and if it appears that the cost would not substantially exceed the cost of the eliminations at the present locations, and if the public interest is better served and the number of such eliminations could be reduced by relocating the railroad, the commissioner after a hearing may order such relocation. Such hearing shall be held upon such notice as the commissioner shall deem reasonable, but not less than ten days, to the railroad company

involved. Notice shall also be given to the municipalities and persons deemed by the commissioner to be interested in the elimination procedure. The commissioner shall serve a certified copy of all orders on the comptroller, the railroad, the municipalities affected thereby and all other parties to the proceeding.

5. In connection with a grade crossing elimination project, the commissioner shall determine the work on the railroad tracks or other railroad facilities which is to be performed by railroad company forces, shall direct the railroad company to perform such work and shall direct the railroad company to prepare plans and estimates of cost for such work and submit such plans and estimates to the commissioner for approval.

6. After the commissioner shall have issued an elimination order in connection with a grade crossing elimination project, the department of transportation, except for the work on the railroad tracks or other railroad facilities to be performed by railroad company forces, shall cause to be prepared the plans, specifications and estimates of cost of such elimination project. Such plans shall specifically show that part of the work of the elimination which when completed shall be maintained by the railroad company and that part which shall be maintained by the state or the municipality in which the work of the elimination is located, as provided in the highway law where a state highway is involved and in the railroad law where a highway other than a state highway is involved, and such plans shall also show that part of the work of the elimination which shall be otherwise maintained.

7. If a state department, agency or commission, public authority or municipality in which the work of the elimination is located, desires to make or cause to have made changes or additions which in the opinion of the commissioner are other than necessary for the elimination, and desires such changes and/or additions to be done in connection with the work of the elimination, the commissioner shall hold a hearing to determine if such changes and/or additions shall be included in the plans and specifications. However, in any case where the interested parties shall have agreed in writing to such changes and/or additions no

hearing shall be required unless the commissioner shall so direct. The commissioner in an order containing findings shall specify which such changes and/or additions are approved and shall be included in the plans and specifications for the elimination project. Such order shall also state an estimated cost of such desired changes and/or additions other than necessary for the elimination, and the portions thereof chargeable, respectively, to the state department, agency or commission, public authority or municipality in which the work of the elimination is located.

Prior to the award of any contract containing changes and/or additions other than necessary for the elimination, the state department, agency or commission desiring such changes and/or additions shall certify to the commissioner that the funds necessary for the payment of the cost of such desired changes and/or additions other than necessary for the elimination, have been made available for that purpose. In the case of a public authority or municipality, such public authority or municipality shall deposit the necessary funds with the comptroller, who shall receive and accept the same for the purposes hereof, subject to the draft or requisition of the commissioner. When the elimination project has been completed and the cost thereof shall have been paid by the state, the commissioner shall render to such public authority or the governing body of such municipality an itemized statement showing in full (a) the amount of money that has been deposited by such public authority or municipality with the comptroller as hereinbefore provided, and (b) all disbursements which have been made hereunder. Any surplus money shall be paid to such public authority or municipality on the warrant of the comptroller on vouchers therefor approved by the commissioner. In the event, upon the completion of the elimination project, it is determined by the commissioner that the amount of the cost to be borne by such public authority or municipality is in excess of the amount deposited by such public authority or municipality with the comptroller, then, in such event, such public authority or municipality shall within ninety days of the receipt of the notice from the commissioner of the amount of the deficiency required to fully compensate the state for the public authority's or municipality's cost for such desired changes and/or additions other than necessary for the elimination, pay such amount to the comptroller.

8. If a municipality desires to have the elimination accomplished in a manner or by a method which is different and more costly than that ordered by the commissioner, such municipality may petition the commissioner to consider such different manner or method. The commissioner may consider such petition if he deems the filing thereof to be timely and, after a public hearing for such purpose, determines that the different manner or method is feasible and will serve the public interest as well as that originally proposed and ordered by him. The commissioner shall cause to be prepared an estimate of cost for the elimination project utilizing the different manner or method, as well as an estimate of cost for the elimination project as originally proposed. The municipality shall be advised of the estimated additional costs and expenses to be borne by such municipality to provide for such different manner or method of construction. The commissioner may amend the elimination order so as to include the different manner or method of construction provided the governing body of such municipality shall by resolution assume the responsibility for the additional costs and expenses to provide such different manner or method of construction. After the elimination order has been amended, the commissioner shall cause to be prepared the plans, specifications and estimates of cost of such elimination project. When such municipality approves such plans, specifications and estimates of cost, it shall by resolution appropriate the funds necessary to provide for the portion of the costs and expenses of the project to be borne by such municipality. Such funds shall, prior to the advertisement for bids for the elimination project, be deposited by such municipality with the comptroller, who is authorized to receive and accept the same for the purposes hereof, subject to the draft or requisition of the commissioner, and a certified copy of such resolution shall be filed with the comptroller and with the commissioner. The moneys so required shall be raised by tax or pursuant to the local finance law or in accordance with any local charter or law, as the case may be. Upon the completion of the elimination project the commissioner shall transmit to the governing body of such municipality an itemized statement showing in full (a) the amount of money that has been deposited by such municipality with the comptroller as hereinbefore

provided, and (b) all disbursements which have been made hereunder. Any surplus money shall be paid to such municipality on the warrant of the comptroller on vouchers therefor approved by the commissioner. In the event, upon the completion of the elimination project, it is determined by the commissioner that the amount of the cost to be borne by such municipality is in excess of the amount deposited by such municipality with the comptroller, then, in such event, such municipality shall within ninety days of the receipt of the notice from the commissioner of the amount of the deficiency required to fully compensate the state for the municipality's cost for such different manner or method of construction, pay such amount to the comptroller. Two or more municipalities may share the cost for such different manner or method of construction in such proportions as they shall mutually agree. Whenever such a different manner or method of construction is utilized in a grade crossing elimination project, the determination of the net benefit to the railroad company shall be based on the estimate of cost for the elimination project as originally proposed.

9. A railroad company may request railroad improvements not an essential part of the elimination and such improvements may be included in the elimination order provided the commissioner determines that such improvements do not adversely affect the project and the comptroller approves the inclusion of such improvements in the project. Such approval may contain such conditions, in respect to repayment, as the comptroller may deem necessary in the interest of the state. If the commissioner determines that such improvements will affect the municipality in which the work of the elimination is located or the property owners adjacent to such project, he may hold a public hearing to consider such improvements prior to issuance of the elimination order.

10. Any elimination order made by the commissioner shall specify incidental improvements, if any, rendered necessary or desirable because of such elimination and which reasonably can be included in the engineering plans therefor.

§ 223. Expenses of elimination; approval and payment; costs of railroad improvements. The expense of every highway-railroad grade crossing elimination project constructed pursuant to the provisions of this article, including incidental improvements connected therewith, as determined by the commissioner to be necessary or desirable because of the elimination and reasonably included in the plans for such elimination and railroad improvements not an essential part of the elimination but desired by the railroad company, shall be paid in the first instance out of the state treasury to the persons and corporations entitled thereto from time to time on accountings and vouchers, approved by the commissioner, upon audit and warrant of the comptroller. Such expense shall be deemed to include any reasonable and necessary expenditures by a railroad company, state department, agency or commission, public authority or municipality and found by the commissioner to have been made in contemplation of the commencement of construction of an elimination project under the provisions of grade crossing elimination acts in effect on the date of enactment of this article. Where a railroad company, state department, agency or commission, public authority or municipality has been authorized to incur and has incurred any expense in connection with a highway-railroad grade crossing elimination, it shall file a statement thereof with the commissioner. The commissioner shall determine if such expenses are reasonable and necessary for the elimination or for incidental improvements made necessary or desirable thereby and, to the extent so determined, they shall be paid by the state to the party or parties entitled thereto and included in the cost of the project.

There shall also be included in the cost of the project all expenses incurred by the commissioner in determining the cost of railroad improvements not an essential part of an elimination and in determining the amount of the net benefits to a railroad company from the elimination. Such expenses of the commissioner shall be paid out of the state treasury to the persons entitled thereto from time to time in accordance with a schedule approved by the director of the budget and on accountings and vouchers, approved by the commissioner, upon audit and warrant of the comptroller, and any moneys available for the payment of the cost of the elimination in connection with which such expenses are incurred shall be available for the payment of such expenses.

Upon the completion and acceptance of the work of the elimination the commissioner shall hold a public hearing upon due notice to the railroad company affected by the project and all other interested parties and thereupon shall determine (1) the cost of such elimination including incidental improvements connected therewith; (2) the cost of such elimination exclusive of such incidental improvements; (3) the cost of the railroad improvements not an essential part of the elimination; (4) the amount of the net benefit to the railroad company from the elimination exclusive of such railroad improvements; and (5) if two or more railroad companies be affected, the proportionate share of such net benefit to be borne by each.

The liability of any railroad company to the state for the cost of railroad improvements not an essential part of the elimination and for the amount of the net benefit to such company from the elimination may be compromised and settled by an agreement in writing with such company, entered into, on behalf of the state, by the commissioner with the written approval of the comptroller and the attorney-general. Such an agreement shall have the same effect as a determination by the commissioner hereinbefore provided for.

The comptroller may require the accounts of the railroad companies, state departments, agencies or commissions, public authorities or municipalities having to do with expenditures made on account of highway-railroad grade crossing elimination projects be kept in a manner to be prescribed by him.

§ 224. Statement of expenses; filing; reimbursement of state for railroad improvements. Upon the determination of the commissioner of (1) the cost of such elimination including incidental improvements connected therewith; (2) the cost of such elimination exclusive of such incidental improvements; (3) the cost of the railroad improvements not an essential part of the elimination; (4) the amount of the net benefit to the railroad company from the elimination exclusive of such railroad improvements; and (5) if two or more railroad companies be affected, the proportionate share of such net benefit to be borne by each, the commissioner shall cause to be prepared, and filed in his office, a statement thereof, with a certified copy of such statement filed with the comptroller and railroad company affected. The amount determined to be the cost of railroad improvements not an essential part of such elimination, together with such charges therefor as the comptroller may legally impose, including interest at the rate payable by the state on any bonds from the proceeds of which the project has been financed or, if and to the extent otherwise financed, at such rate not exceeding seven and one-half per centum as the comptroller may determine, shall be repaid to the state forthwith upon demand by the comptroller. The amount of the net benefit to a railroad company from an elimination shall be repaid to the state by such railroad company at such times and in such manner as may be determined by the comptroller together with interest at the rate payable by the state on any bonds from the proceeds of which the project has been financed or, if and to the extent otherwise financed, at such rate not exceeding seven and one-half per centum as the comptroller may determine, within a period of not to exceed ten years from the date of the commissioner's determination, but in no event shall the total amount of such repayments, exclusive of interest and such additional charges as may be legally imposed by the comptroller, exceed fifteen per centum of the expense of such elimination exclusive of all incidental improvements.

Notwithstanding the preceding paragraph, the commissioner may, at any time after the work of an elimination has been commenced, direct a hearing for the purpose of determining the cost, or a portion thereof, of railroad improvements not an essential part of such elimination, and the amount so determined shall be immediately repayable to the state in the manner above provided.

In the event of the failure or refusal of the railroad company or the successor thereof, to pay the amount or amounts specified and at the times prescribed, or in the event of dissolution of such railroad company or successor, the entire indebtedness of such company in process of dissolution shall become immediately due and payable and the amount or amounts so due and payable may be recovered as follows:

The comptroller may certify the amount or amounts so due and payable to the governing body of the county or counties in which the crossing is located, whereupon, it shall be the duty of such governing body to apportion the amount or amounts so certified to the several towns and cities in such county according to the assessed valuation of the real property of such railroad company or the successor thereof in such respective towns and cities and to place the several amounts so apportioned on the respective assessment rolls of such towns and cities and to issue its warrant or warrants for the collection thereof. Thereupon it shall become the duty of such towns and cities through their appropriate officers to collect the respective several amounts so apportioned in the same manner as other taxes are collected in such towns and cities and when collected to pay the same to the county treasurer of such county who shall thereupon pay the same into the state treasury. Any amount so levied shall thereupon become and be a first and paramount lien upon all real property of such railroad company or the successor thereof within such respective towns and cities.

All moneys received by the comptroller from a railroad company in payment of the amounts due the state from such company as the cost of railroad improvements not an essential part of an elimination or the amount of net benefit for such railroad company shall be credited to the grade crossing elimination debt fund, established by section ninety-six of the state finance law.

Upon the completion of work on the railroad tracks or other railroad facilities which has been performed by the railroad company forces at the direction of the commissioner, there shall be an accounting and the commissioner shall certify to the comptroller the amount of the payment which is due from the state to such railroad company. Such payment shall be made out of the state treasury to such railroad company on vouchers, approved by the commissioner, upon the audit and warrant of the comptroller. From time to time, prior to the completion of such work, intermediate accountings may be had and payments made thereon in the same manner as the final accounting.

§ 225. Performance of work. 1. Except for work on the railroad tracks or other railroad facilities performed by railroad company forces at the direction of the commissioner and elimination work which the commissioner determines shall be accomplished by use of departmental forces, equipment and materials purchased therefor, all highway-railroad grade crossing elimination work shall be performed by contract in the same manner as provided for state highways in article three of the highway law, including public advertisement for proposals. A certified copy of any contract awarded by the commissioner shall be filed with the railroad company affected thereby.

2. All work performed by contract shall be carried out under the direct supervision of the commissioner, except that all work performed by contract upon or affecting railroad property, right of way or facilities shall be subject to the approval of and joint supervision by the railroad company affected by the elimination. No work upon or affecting railroad property, right of way or facilities shall be progressed without the approval of the railroad company. All work of the elimination project shall be under the general supervision of the commissioner. Upon completion of the work under a contract let, as provided in this article, the commissioner shall cause the same to be inspected and if he approves, accept the work. The commissioner shall make an order certifying the completion of the contract, together with all other incidental work necessary in carrying out the elimination project to make available a completed project ready for public use.

3. A railroad company who has been directed by the commissioner to prepare plans and estimates of cost for work on the railroad tracks or other railroad facilities is authorized to receive competitive bids for all or a portion of the work which it has been directed to perform by railroad company forces provided such contract work has been previously approved by the commissioner. Prior to the award of such a contract, a tabulation of bids received, together with a recommendation for award, shall be submitted to the commissioner who, if he concurs with the recommendation, shall approve such award and submit the tabulation and

the recommendation to the comptroller for his approval.

4. Prior to the approval of the plans, estimates of cost and award of contract for any construction work on an elimination project where the railroad company has been directed by the commissioner to perform work on the railroad tracks or other railroad facilities, the state industrial commissioner shall upon the request of the commissioner determine and furnish to said commissioner the schedule of minimum wages to be paid to the several classes of workmen, laborers and mechanics to be employed upon such work. Such schedule wages shall be annexed to and form a part of the specifications for such work and shall be incorporated in any contract therefor.

5. If during the progress of the work, it shall appear to the commissioner that a change in plans or a modification of such contract is necessary or desirable, he shall cause to be prepared the necessary revised plan and an estimate of cost thereof or a modification of such contract. The commissioner shall determine whether he or the railroad company shall perform the work or cause the same to be performed or modify the contract to include the work, at prices not to exceed those stated in such approved estimate. If during the progress of the work, it shall appear to the railroad company bearing a part of the cost of the elimination work, that a change in plans or a modification of such contract is or might be necessary, such railroad company may submit to the commissioner revised plans and an estimate of the cost thereof or a proposed modification of such contract, and if the commissioner shall determine that such change in plans or modification of contract is necessary or desirable, he shall approve such revised plans or modified contracts, and may approve such estimate or require a new estimate. If the commissioner approves such estimate or a new estimate, he shall determine whether he or the railroad company shall perform the work or cause the same to be performed or modify the contract to include the work, at prices not to exceed those stated in such approved estimate. If the cost of any elimination shall be increased as the result of any such change in plans or modification of contract, such increased cost shall be audited and paid as prescribed in this article. If during the progress of the work, it shall appear to the commissioner or such

railroad company, that extra work is necessary but not so substantial or material as to necessitate a change in plans or modification of such contract, such extra work may be performed or caused to be performed by the commissioner with the approval of such railroad company or by such railroad company with the approval of the commissioner.

6. Claims on account of a change in plans or for extra work may be adjusted by the commissioner if the amount thereof can be agreed upon with the persons making such claims, and any amount so agreed upon shall be paid as a part of the cost of such elimination as prescribed by this article. If the amount of any such claim is not agreed upon, but is paid by the railroad company affected thereby, such railroad company may present same to the court of claims, which shall hear such claim and determine if the amount of such claim or any part thereof is a legal claim against the state and if it so determines, to make an award and enter judgment thereon against the state, provided, however, that such claim is filed with the court of claims within six months after the acceptance by the commissioner of the final agreement of the completed elimination project contract. The amount of any such judgment of the court of claims shall be paid out of the state treasury from moneys appropriated for purposes connected with elimination of grade crossing projects; and, if necessary, the comptroller shall revise or supplement his determination, as prescribed by this article, relative to times, amounts, and manner of repayments to the state by such railroad company. The comptroller shall also adjust his accounts in order to provide for the payment to the state of the part of such judgment chargeable to any railroad company or municipality.

§ 226. Persons aggrieved; right to hearing; rehearing; appeals. Any person aggrieved by any order or decision provided for in this article, or made pursuant thereto, and who was a party to such proceeding, may within thirty days after the service of such order or decision, apply for a hearing on the subject matter thereof or, in case a hearing was had prior to the making of any such order or decision, for a rehearing thereon upon notice and such hearing or rehearing shall be granted or denied by the commissioner within thirty days after the filing of the application therefor and upon such hearing or rehearing such order or decision shall be set aside, modified or affirmed. Any person aggrieved by any order or decision provided for in this article, or made pursuant thereto, and who was a party to such proceeding, may within sixty days after the service of such decision or order appeal therefrom to the appellate division of the supreme court in the department in which such grade crossing is located, and to the court of appeals, in the same manner and with like effect as is provided in the case of appeals from an order of the supreme court.

§ 227. Federal aid; receipt and expenditure. The comptroller is hereby authorized to accept from the federal government or any department or agency thereof any moneys in any way granted, allocated or apportioned for the purpose of highway-railroad grade crossing eliminations or the reconstruction or repair of existing grade crossing separation structures and deposit them in accordance with existing federal or state law or rules or regulations applicable thereto and the same shall be available for the purposes granted, allocated or apportioned. Such moneys shall be available to reimburse the state for its expenses in connection with a grade crossing elimination project including incidental improvements rendered necessary or desirable by such project. The expense of net benefit to be borne by the railroad company shall be the lesser of (1) the amount of net benefit determined by the commissioner in accordance with this act or (2) the difference between the cost of the project exclusive of incidental improvements and the amount of federal aid for the project exclusive of incidental improvements. State moneys made available for federal aid grade crossing elimination projects may be used in the first instance to pay the costs of said projects.

§ 228. Acquisition of property required for grade crossing elimination projects. 1. The commissioner shall cause to be prepared an accurate acquisition map of any and all property which he may deem necessary for purposes connected with the elimination of any grade crossing, or of any property in and to which he may deem the acquisition or exercise of an easement, interest or right to be necessary for such purposes, indicating and describing in each case the particular easement, interest or right. Such property may be acquired with controlled access when acquired in connection with the construction of a controlled access highway as defined by the highway law. On the approval of such map by the commissioner, he may acquire such property, controlled access rights, easements, interests or rights, pursuant to the provisions of the eminent domain procedure law.

2. If the commissioner shall determine, prior to the filing of such map in the office of the county clerk or register of the county, that changes, alterations or modifications of such map as filed in the main office of the department should be made, he or she shall, subject to the provisions of article two of the eminent domain procedure law, if applicable, direct the preparation of an amended map, either by preparing a new map or by making changes on the original tracing of such map, with a notation indicating such changes, and file a certified copy of the same in the main office of the department in the same manner as the original map was filed and said amended map shall thereupon in all respects and for all purposes supersede the map previously filed.

3. If the commissioner shall determine, prior to the filing of such copy of the acquisition map in the office of the county clerk or register as provided in section four hundred two of the eminent domain procedure law, that such map should be withdrawn, he or she shall file a certificate of withdrawal in the office of the department of law. Upon the filing of such certificate of withdrawal the map to which it refers shall be cancelled and all rights thereunder shall cease and determine.

4. The commissioner shall deliver to the attorney general a copy of such acquisition map, whereupon it shall be the duty of the attorney general to advise and certify to the commissioner the names of the owners of the property, easements, interests or rights described in the said aquisition map, including the owners of any right, title or interest therein, pursuant to the requirements of section four hundred three of the eminent domain procedure law.

5. If, at or after the vesting of title to such property in the people of the state of New York in the manner provided for in the eminent domain procedure law, the commissioner shall deem it necessary to cause the removal of an owner or other occupant from such property, he may cause such owner or other occupant to be removed therefrom by proceeding in accordance with section four hundred five of such law. The proceedings shall be brought in the name of the commissioner as agent of the state. If any person proceeded against shall contest the petition by an answer, the attorney general shall be notified, and he thereafter shall represent the petitioner in the proceedings. No execution shall issue for costs, if any, awarded against the state or the commissioner, but they shall be part of the costs of the acquisition and be paid in like manner. Proceedings may be brought separately against one or more of the owners or other occupants of a property, or one proceeding may be brought against all or several of the owners or other occupants of any or all property within the territorial jurisdiction of the same justice or judge; judgment shall effect or be made for immediate removal of persons defaulting in appearance or in answering, or withdrawing their answers, if any, without awaiting the trial or decision of issues raised by contestants, if any.

6. Upon making any agreement provided for in section three hundred four of the eminent domain procedure law, the commissioner shall deliver to the comptroller such agreement and a certificate stating the amount due such owner or owners thereunder on account of such acquisition of his or their property and the amount so fixed shall be paid out of the state treasury from moneys appropriated for purposes connected with elimination of grade crossing projects but not until there shall have been filed with the comptroller, a certificate of the attorney general showing the person or persons claiming the amount so agreed upon to be legally entitled thereto.

7. Application for reimbursement of incidental expenses as provided in section seven hundred two of the eminent domain procedure law shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall

deliver a copy thereof to the comptroller together with a certificate stating the amount due thereof, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of porperty under this article.

8. The commissioner, with the approval of the director of the budget shall establish and may from time to time amend rules and regulations authorizing the payment of actual reasonable and necessary moving expenses of occupants of property acquired pursuant to this article; of actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not exceeding an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the commissioner; and actual reasonable expenses in searching for a replacement business or farm; or in hardship cases for the advance payment of such expenses and losses. For the purposes of making payment of such expenses and losses only the term "business" means any lawful activity conducted primarily for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted. Such rules and regulations may further define the terms used in this subdivision. In lieu of such actual reasonable and necessary moving expenses, any such displaced owner or tenant of residential property may elect to accept a moving expense allowance, plus a dislocation allowance, determined in accordance with a schedule prepared by the commissioner and made a part of such rules and regulations.

In lieu of such actual reasonable and necessary moving expenses, any such displaced owner or tenant of commercial property who relocates or discontinues his business or farm operation may elect to accept a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than two thousand five hundred dollars nor more than ten thousand dollars. In the case of a business, no such fixed relocation payment shall be made unless the commissioner finds and determines that the business cannot be relocated without a substantial loss of its existing patronage, and that the business is not part of a commercial enterprise having at least one other establishment, which is not being acquired by the state or the United States, which is engaged in the same or similar business. In the case of a business which is to be discontinued but for which the findings and determinations set forth above cannot be made, the commissioner may prepare an estimate of what the actual reasonable and necessary moving expenses, exclusive of any storage charges, would be if the business were to be relocated and enter into an agreed settlement with the owner of such business for an amount not to exceed such estimate in lieu of such actual reasonable and necessary moving expenses. Application for payment under this subdivision shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller together with a certificate stating the amount due thereunder, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of property under this section. As used in this subdivision the term "commercial property" shall include property owned by an individual, family, partnership, corporation, association or a nonprofit organization and includes a farm operation. As used in this subdivision the term "business" means any lawful activity, except a farm operation, conducted primarily for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property; for the sale of services to the public; or by a nonprofit organization.

9. The commissioner pursuant to section three hundred five of the eminent domain procedure law may make agreements on such terms, conditions and consideration as he deems beneficial to the state with respect to any property acquired whereby such property may be used and occupied by the former owner, tenant or by any other party from a date specified in said agreement, until such time as the state requires and obtains actual physical possession. The agreements for the use and occupancy of such property may be managed, supervised and enforced (1)

by the staff, forces and equipment of the department; or (2) by the commissioner contracting for the management, supervision and enforcement thereof with any person, firm or corporation; or (3) by a combination of such methods. The use and occupancy of such property under this article and the right of the state or its duly authorized agent to recover possession thereof shall not be subject to the emergency housing rent control law.

10. The commissioner may make supplemental relocation payments, separately computed and stated, to displaced owners and tenants of residential property acquired pursuant to this section who are entitled thereto, as determined by him. The commissioner, with the approval of the director of the budget, may establish and from time to time amend rules and regulations providing for such supplemental relocation payments. Such rules and regulations may further define the terms used in this subdivision. In the case of property acquired pursuant to this section which is improved by a dwelling actually owned and occupied by the displaced owner for not less than one hundred eighty days immediately prior to initiation of negotiations for the acquisition of such property, such payment to such owner shall not exceed fifteen thousand dollars. Such payment shall be the amount, if any, which, when added to the acquisition payment equals the average price, established by the commissioner on a class, group or individual basis, required to obtain a comparable replacement dwelling that is decent, safe and sanitary to accommodate the displaced owner, reasonably accessible to public services and places of employment and available on the private market, but in no event shall such payment exceed the difference between acquisition payment and the actual purchase price of the replacement dwelling. Such payment shall include an amount which will compensate such displaced owner for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired pursuant to this section was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred eighty days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the

principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located. Any such mortgage interest differential payment shall, notwithstanding the provisions of section twenty-six-b of the general construction law, be in lieu of and in full satisfaction of the requirements of such section. Such payment shall include reasonable expenses incurred by such displaced owner for evidence of title, recording fees and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses. Such payment shall be made only to a displaced owner who purchases and occupies a replacement dwelling which is decent, safe and sanitary within one year subsequent to the date on which he is required to move from the dwelling acquired pursuant to this section or the date on which he receives from the state final payment of all costs of the acquired dwelling, whichever occurs later, except advance payment of such amount may be made in hardship cases. In the case of property acquired pursuant to this section from which an individual or family, not otherwise eligible to receive a payment pursuant to the above provisions of this subdivision, is displaced from any dwelling thereon which has been actually and lawfully occupied by such individual or family for not less than ninety days immediately prior to the initiation of negotiations for the acquisition of such property, such payment to such individual or family shall not exceed four thousand dollars. Such payment shall be the amount which is necessary to enable such individual or family to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities and reasonably accessible to his place of employment, but shall not exceed four thousand dollars, or to make the down payment, including reasonable expenses incurred by such individual or family for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses, on the purchase of a decent, safe and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities, but shall not exceed four thousand dollars, except if such amount exceeds two thousand dollars, such person must equally match any such amount in excess of two thousand dollars, in making the down payment. Such payments may be made in installments as determined by the commissioner. Application for payment under this subdivision shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller, together with a certificate stating the amount due thereunder, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of property under this section.

11. Any owner may present to the court of claims, pursuant to the provisions of section five hundred three of the eminent domain procedure law, a claim for the value of such property acquired and for legal damages, as provided by law for the filing of claims with the court of claims. Awards and judgments of the court of claims shall be paid in the same manner as awards and judgments of that court for the acquisition of lands generally and shall be paid out of the state treasury from moneys appropriated for purposes connected with elimination of grade crossing projects.

12. If the work of any grade crossing elimination project shall cause actual damage to property not acquired as provided in this article, the state shall be liable therefor, but this provision shall not be deemed to create any liability not already existing by statute. Claims for such damage may be adjusted by the commissioner, if the amounts thereof can be agreed upon with the persons making such claims, and any amount so agreed upon shall be paid as a part of this cost of such elimination project. If the amount of any such claim is not agreed upon, such claim may, pursuant to the provisions of the eminent domain procedure law, be presented to the court of claims which shall hear such claim and determine if the amount of such claim or any part thereof is a legal

claim against the state and, if it so determines, to make an award and enter judgment thereon against the state, provided, however, that such claim is filed with the court of claims within three years after the acceptance by the commissioner of the final agreement of the completed elimination project contract.

13. Notwithstanding any other provision of this article, the commissioner may acquire by grant or purchase, in the name of the people of the state of New York, any property which he deems necessary for any of the purposes of this chapter, and payment therefor, if any, shall be made in the manner prescribed in this article for the payment of adjusted acquisition claims, provided, however, that no real property shall be so acquired unless the title thereto shall be approved by the attorney general.

14. The expense of such acquisitions including the cost of making surveys and preparing descriptions and maps of lands to be acquired and administrative duties in connection therewith, serving notices of appropriation, publication, making appraisals and agreements and of searches ordered and examinations and readings of title made by the attorney general, and expenses incurred by the commissioner or attorney general in proceedings for removal of owners and occupants, shall be deemed part of the cost of such elimination project.

15. Notwithstanding any other law, the commissioner, his officers, agents or contractors when engaged on such elimination projects, may pursuant to the provisions of section four hundred four of the eminent domain procedure law, enter upon property for the purpose of making surveys, test pits, test borings, or other investigations and also for temporary occupancy during construction. Claims for any damage caused by such entry, work or occupation not exceeding two thousand five hundred dollars may be adjusted by agreement by the commissioner with the owner of the property affected as determined by him by reasonable investigation without appropriating such property. Upon making any such adjustment and agreement, the commissioner shall deliver to the comptroller such agreement and a certificate stating the amount due such owner and the amount so fixed shall be paid out of the state treasury

from monies appropriated for such elimination project.

16. The commissioner may determine whether any property acquired pursuant to this article or grade crossing elimination acts in effect on the date of enactment of this article for grade crossing elimination purposes may be, in whole or in part, sold or exchanged on terms beneficial to the state, and in all cases of such determination he may, subject to the compliance with the provisions of section four hundred six of the eminent domain procedure law and notwithstanding any other law, dispose of such property, provided he shall have first determined that such property is no longer necessary or useful for the purposes for which it was acquired and provided that with respect to crossings where access is not controlled the disposal of such property shall not deprive an owner of any existing frontage thereon immediately in front of his premises. In order to carry any such sale or exchange into effect the commissioner may execute and deliver, in the name of the people of the state, a quitclaim of, or a grant in and to, such property. Each such instrument of conveyance shall be prepared by the attorney general and, before delivery, shall be approved by him as to form and manner of execution.

18. If subsequent to the acquisition of a temporary easement right in property pursuant to this article, the commissioner shall determine; (a) that the purposes for which such easement right was acquired have been accomplished and that the use and occupancy of said property for such purposes is no longer necessary, or (b) that the period fixed by the terms of such easement for expiration of the same should be further limited, or (c) if the acquisition of such easement was for an indefinite period, that such period should be fixed and determined, he shall make his certificate to such effect. Upon the expiration of the then fixed and determined term of the easement, the easement will expire by the terms of the certificate and the affected property will be surrendered back to the owner, free of such easement, and the easement will be accordingly thereupon terminated, released and extinguished. The commissioner shall cause a copy of such certificate to be filed in the office of the department of state. In the event that the term of a temporary easement has been fixed at a specific period of time by the

description and map no further certificate shall be required.

19. Notwithstanding any other provision of this section, the commissioner of transportation shall have the power to acquire by grant or purchase, in the name of the people of the state of New York, any property which he deems necessary for any of the purposes provided for in this section and may also acquire for such purposes from the Palisades interstate park commission, in the name of the people of the state of New York, such lands and such easements, licenses, permits and other rights over lands as the said commission is authorized to grant, sell, exchange or convey. When the acquisition by appropriation, grant or purchase of property deemed necessary for grade crossing elimination purposes would result in substantial consequential damages to the owner's remaining property, due to loss of access, severance or control of access, the commissioner of transportation, for and in behalf of the people of the state of New York, may acquire by purchase or grant all or any portion of such remaining property. Payment therefor, if any, shall be made in the manner prescribed in this section for the payment of adjusted appropriation claims, provided, however, that no real property shall be so acquired unless the title thereto shall be approved by the attorney general.

20. After acceptance of the completed work, the railroad company shall apply to the commissioner for the conveyance to it of any property, acquired as aforesaid, and or any other property owned by the state which property is under the jurisdiction of the commissioner and which is used to accomplish a grade crossing elimination, necessary for the proper operation and maintenance of the railroad. If it shall appear to the commissioner that such application is reasonable and the property is necessary for the proper operation and maintenance of such railroad and such property is not necessary for highway, road or street purposes, the commissioner shall grant and convey such property to such railroad company upon such terms and conditions as he may prescribe.

21. In case any property acquired as aforesaid and not conveyed to a railroad company physically forms a part of any existing highway, road or street or a new highway, road or street opened to take the place of

an existing highway, road or street, the fee title of which existing highway, road or street is vested in a municipality, such municipality may apply to the commissioner for a conveyance of such property. The commissioner may grant and convey such property to such municipality upon such terms and conditions as he may prescribe.

22. Any property acquired as aforesaid and not conveyed to a railroad company or a municipality, physically forming a part of any existing or proposed highway, road or street shall become a part of the state, county, town, city, village or other highway or street system of which such existing or proposed highway, road or street forms a part and shall be under the jurisdiction of and maintained by the proper authorities having charge of such respective systems.

23. If a railroad company has acquired, is acquiring or is about to acquire title to any property in addition to or beyond the normal or reasonable limits of its existing right of way for the operation of the railroad which the commissioner may deem necessary in the elimination of any crossing, and such property is in the opinion of such commissioner necessary for the proper operation and maintenance of the railroad of such railroad company and not necessary for highway, road or street purposes, same need not be acquired as aforesaid, but may be retained or otherwise acquired by such railroad company, in which event such railroad company shall be compensated for such property in such an amount as may be agreed upon by and between such railroad company and the commissioner. Any amount so agreed upon shall be paid out of the state treasury from moneys appropriated for purposes connected with elimination of grade crossing projects.

24. In fixing the consideration, if any, to be paid by any railroad company or municipality for any property acquired by the people of the state of New York for an elimination and to be conveyed to such railroad company or municipality as prescribed by this article, due regard shall be given by the commissioner to all facts involved and any other property involved in connection with the acquisition of property for such elimination and such consideration shall be fixed accordingly. Such consideration shall be paid to the state and the expenses of the project

shall be adjusted to reflect such consideration. Any conveyance of any such property shall contain a reservation to the people of the state of New York of the title to any structures and construction work necessary for highway, road or street purposes and, also, of the legal right to maintain same.

25. Any railroad company or its lessee, during the progress of changing the grade of its railroad under the provisions of this article, is authorized to maintain such temporary structures and to occupy any part or parts of an adjacent street and of intersecting streets as may be necessary in the premises or for the continued operation of its railroad and to lay down such temporary tracks on adjacent and intersecting streets as may be necessary for carrying on the railroad business during the progress of the work, all of which shall be done only with the approval and direction of the commissioner as a part of the elimination work. If any temporary acquisition of the rights of abutting property owners is made for this purpose the compensation or damages, if any, paid for such acquisition shall be deemed to be part of the elimination cost whether paid in the first instance by the railroad corporation or by the state.

26. Notwithstanding any other provision of law a municipality may grant a permit to the commissioner to occupy, for grade crossing elimination purposes, any of the property set forth and described on the maps prescribed by this article which are owned by such municipality. Such permit may be for permanent or temporary occupancy as shall be determined by the commissioner, and the permit shall state the purposes for which the property is obtained, together with the terms and conditions including payment, if any, which is to be made under the permit. The permit may be in lieu of acquisition of land pursuant to the provisions of the eminent domain procedure law as provided in this article. The property described in any such permit may be utilized by the people of the state of New York, their officers and agents, or by any railroad company to which such permit may be transferred or assigned, for grade crossing elimination purposes. Payment, if any, shall be made by the comptroller and paid out of the state treasury from moneys appropriated for purposes connected with elimination of grade

crossing projects, after the department of transportation has filed a copy of the approved permit with the comptroller.

27. The provisions of this article providing for the acquisition and transfer of property shall apply in all respects to the acquisition and transfer of property necessary for those incidental improvements held necessary or desirable because of the elimination project.

28. Notwithstanding any other provisions of law, the commissioner may use, for grade crossing elimination purposes, any property under his jurisdiction acquired for other public purposes which he deems necessary, exclusively for, or in conjunction with grade crossing elimination purposes. Transfer of such use shall be effected by an official order of the commissioner to be filed in the offices of the department and of the department of state, accompanied by a description and map of such property. When the use is to be exclusively for grade crossing elimination purposes, then upon such filing of the description, map and official order of transfer of use, the property shall be used and maintained for grade crossing elimination purposes and be governed as though the said property was acquired pursuant to this article for grade crossing elimination purposes. When dual use is to be made of such property for grade crossing elimination purposes and other public purposes by the state, the official order of transfer shall so certify, and upon such filing of the description, map and official order of transfer, the property shall be used and maintained for such dual purposes, and is, in the discretion of the commissioner, to be governed either by this article or the statute under which jurisdiction was acquired by the commissioner or both.

29. Notwithstanding any other provision of law, the commissioner may accept in the name of the people of the state of New York from the United States or any authorized agency, unit or subdivision thereof or any instrumentality or corporation owned or controlled by the United States a release, easement, grant, conveyance or permit, with or without conditions, authorizing the construction and permanent maintenance of a grade crossing elimination project, pursuant to this article, on property in which any rights or easements or the fee is held or owned by

the United States or any authorized agency, unit or subdivision thereof or any instrumentality or corporation owned or controlled by the United States, or on property in which the fee or a perpetual easement was theretofore appropriated by the state for flood control purposes, pursuant to chapter eight hundred sixty-two of the laws of nineteen hundred thirty-six, and acts amendatory thereof, whether retained by the state or conveyed or to be conveyed to the United States.

30. (a) Notwithstanding any other provision of law, the commissioner may accept in the name of the people of the state of New York any property interest or easement right held or owned by the public service commission in the name of the people of the state of New York pursuant to grade crossing elimination acts. The commissioner may, in whole or in part, sell, transfer or exchange such property interest or easement right on terms beneficial to the state, provided that such property is no longer necessary or useful for the purposes for which it was acquired. To effect the sale, transfer or exchange, the commissioner may execute and deliver, in the name of the people of the state, a quitclaim of, or a grant in and to, such property or easement. Each such instrument of grant or conveyance shall be prepared by the attorney general.

(b) A municipality or a railroad company may apply to the commissioner for the grant or conveyance of such property interest or easement right. If it shall be made to appear to the commissioner that such grant or conveyance is reasonable and the property or easement is necessary for the proper operation and maintenance of highways, roads or streets owned by such municipality or for the proper operation and maintenance of such railroad, the commissioner may, upon reasonable terms and conditions, grant and convey such property or easement to such municipality or railroad company. The payment, if any, required by the commissioner for such grant or conveyance shall be deposited in the state treasury.

§ 229. Pending grade crossing elimination proceedings. In connection with any proceedings for the elimination of a grade crossing in which all business and matters have not been completed on March first, nineteen hundred seventy-one, the commissioner may make any determinations; redeterminations; findings; amended, supplemental or revised findings; orders; or amended, supplemental or revised orders as he shall deem appropriate or necessary to carry out the duties and responsibilities of his office and may conduct such business hearings for such purposes as he shall deem appropriate.

ARTICLE TEN-A

IMPLEMENTATION OF RAIL PRESERVATION BOND ACT OF NINETEEN HUNDRED SEVENTY-FOUR AND THE ENERGY CONSERVATION THROUGH IMPROVED TRANSPORTATION BOND ACT OF NINETEEN HUNDRED SEVENTY-NINE

§ 230. Expenditure of monies. The monies received by the state from the sale of bonds pursuant to the rail preservation bond act of nineteen hundred seventy-four and the energy conservation through improved transportation bond act of nineteen hundred seventy-nine shall be expended pursuant to appropriation for any rail preservation project or local street or highway project approved hereunder.

§ 231. Definitions. As used in this article, the following terms shall include and mean:

1. "Municipality." A city, county not wholly contained within a city, town, village, special transportation district, public benefit corporation or other public corporation, or two or more of the foregoing acting jointly.

2. "Rail preservation project." The acquisition, construction, reconstruction, establishment, improvement or rehabilitation by the state or a municipality of any railroad capital facility and any capital equipment used in connection therewith with funds made available as a result of the rail preservation bond act of nineteen hundred seventy-four and the acquisition, construction, reconstruction, establishment, improvement or rehabilitation by the state or a municipality of any rail capital facility or rapid transit capital facility and any capital equipment used in connection therewith with funds made available as a result of the energy conservation through improved transportation bond act of nineteen hundred seventy-nine.

3. "Railroad capital facility." Railroad rights of way, as well as trackage, rails, cars, locomotives, rolling stock, signals, communication and ventilation systems, power plants, stations, terminals, storage yards, repair and maintenance shops, yards, equipment and parts, offices and other incidental real estate or personalty used or held for or incidental to the operation, rehabilitation or improvement of any railroad operating rail freight and rail passenger transportation services, or to operate such services, including, but not limited to buildings, structures and real property.

4. "Local street or highway project." A local street, highway and/or bridge that is not on the state highway system and not under the maintenance and/or operational jurisdiction of the state for which there is a project for resurfacing of existing pavements to correct structural deficiencies or substandard riding characteristics; the sealing of pavements; the treatment of highway pavements to improve skid resistance; the improvement of the highway to make it more energy efficient; modification of roadway geometrics for improvement of operational safety; the improvement of highway appurtenances including but not limited to shoulders, guiderail systems, slopes, traffic control devices, sidewalks, curbs, drainage systems; retaining and sustaining walls; removal of hazards and/or their replacement or correction by the use of recognized and approved safety or protective devices; bridge improvement including structural rehabilitation or replacement.

5. "Applicant." A municipality in the case of a rail preservation project, and a county, except the counties comprising New York city, and New York city in the case of a local street or highway project.

§ 232. State assistance application procedure. 1. A municipality may submit an application for state assistance toward the cost of any municipal rail preservation project which is eligible for state assistance pursuant to this article to the commissioner in such form and containing such information as he may require.

2. A county highway superintendent, or the county official having jurisdiction over the county highway system for any county which does not have a county highway superintendent, or in the case of the city of New York, the city commissioner of transportation, may submit an application for state assistance toward the cost of any local street or highway project which is eligible for state assistance pursuant to this article to the commissioner in such form and containing such information as he may require.

3. The commissioner shall review any such project application and may approve, disapprove or recommend modifications thereto consistent with applicable law, criteria, standards or rules and regulations relative to such project.

4. Upon approval of a project application, a municipality, county highway superintendent, county official or city commissioner of transportation, as the case may be, may enter into a contract as further provided within this article with the commissioner for payment of state assistance to be received pursuant to this article.

5. In connection with local street or highway projects, the total funds made available as a result of the energy conservation through improved transportation bond act of nineteen hundred seventy-nine shall be allocated in accordance with the following percentums: a) thirty-eight percentum for town roads; b) thirty percentum for county roads; c) eighteen percentum for city and village highways, streets and

roads, outside of New York city; and d) fourteen percentum for highways and streets in New York city.

§ 233. Powers and duties of the commissioner. In administering the provisions of this article, the commissioner:

1. shall make an itemized estimate of funds or appropriations required annually for inclusion in the executive budget;

2. shall, by April first, nineteen hundred eighty, determine and submit to the governor and legislature for approval the allocations of the funds made available as a result of the energy conservation through improved transportation bond act of nineteen hundred seventy-nine on a county by county basis broken into categories (a), (b) and (c) specified in subdivision five of section two hundred thirty-two of this chapter. Once such allocations have been approved by the governor and by the legislature by a concurrent resolution of such bodies such allocations shall not be modified except by an act of the legislature which is enacted into law by the governor. Such allocations shall take into consideration the miles of highway in each category in relationship to total number of miles of highway in the local street or highway project program and other similar factors utilized in the safer off system road program based on the most recent information and data available to the commissioner.

3. may in the name of the state as further provided within this article contract to make, within the limitations of appropriations available therefor, a state grant for payment to a municipality, county, or city of New York representing the state share of the cost of a project approved and to be undertaken pursuant to this article. Such contracts shall be subject to the approval by the state comptroller and as to form by the attorney general.

4. shall approve vouchers for the payment of local assistance pursuant to an approved contract. All such payments shall be paid on audit and warrant of the state comptroller.

5. may perform such other and further acts and promulgate such rules and regulations as may be necessary, proper or desirable to carry out the provisions of this article.

§ 234. Powers and duties of an applicant. An applicant shall have the power and authority to:

1. undertake and carry out any project for which state assistance is received or to be received pursuant to this article and maintain and operate such project;

2. expend money received from the state pursuant to this article for costs incurred in conjunction with the approved project;

3. perform such other and further acts as may be necessary, proper or desirable to carry out a project or obligation, duty or function related thereto;

4. for local street or highway projects outside the city of New York, determine, subject to the approval of the commissioner, the suballocations, of the allocation determined for such county pursuant to subdivision two of section two hundred thirty-three of this chapter that should be made available to the towns, cities, villages, within each county and to the county itself. Such suballocation determination shall be based on information and data furnished each such county by the commissioner for such purpose. The applications for state assistance shall be made in accordance with such suballocations and within the total allocation determined to be available to such county;

5. enter into contracts with the towns, cities and villages within such county with respect to undertaking local street or highway projects on the town highway, or city or village highway, street or road systems respectively; and

6. for local street or highway projects, to undertake the work of the

project either with its own forces or by contract, however, whenever the estimate for the construction contract work exceeds three hundred fifty thousand dollars such work must be performed by contract let by the competitive bid process.

§ 235. Approval of projects. 1. Rail preservation or local street or highway projects shall be undertaken pursuant to this article only with the approval of the commissioner, and in the case of municipal projects for rail preservation, or local street or highway projects, pursuant to an approved contract for state assistance.

2. In reviewing rail preservation projects, the commissioner shall give due consideration to:

a. the urgency of the need for preserving or improving commuter and intercity rail passenger and rail freight services;

b. the age and condition of the railroad capital facilities to be acquired, reconstructed or improved by the project;

c. the economic feasibility of maintaining or improving commuter and intercity rail passenger or rail freight services in relation to the project; and

d. whether the project is part of, or consistent with, the statewide comprehensive master plan for transportation.

3. In reviewing local street or highway projects, the commissioner shall give due consideration to:

a. the urgency of the need for preservation and improving the local street, highway or bridge in order to make it more energy efficient, safer and economical to maintain and operate; and

b. whether the project is part of, or consistent with, the statewide comprehensive master plan for transportation.

4. With respect to any municipal rail preservation project, or a local street or highway project, the state may finance the total cost thereof or such lesser amount as may be set forth in the appropriation or as may be established by the legislature by legislative act or by the the commissioner pursuant to contract. In the event no local share is specified in the appropriation of funds for the local street or highway projects or by another act of the legislature, then the local share shall be determined by the commissioner on the same basis and criteria utilized for the safer off system road program.

§ 236. Contracts for projects. 1. The commissioner, in the name of the state, may enter into contracts with municipalities, counties or the city of New York to undertake rail preservation projects, or local street or highway projects, and any such municipality, county or the city of New York may enter into a contract with the commissioner. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:

a. an estimate of the reasonable cost of the project as determined by the commissioner;

b. an agreement by the commissioner to pay to the municipality, county or the city of New York during the progress of construction or following completion of construction as may be agreed upon by the parties, an amount, not to exceed the total cost of the project or such lesser amount as may have been established pursuant to section two hundred thirty-five;

c. an agreement by the municipality, county or city of New York;
(i) to proceed expeditiously with, and complete, the project as approved by the commissioner,
(ii) to apply for or make reasonable efforts to secure federal assistance, if any, for the project,
(iii) to secure the approval of the commissioner before applying for

such federal assistance, in order to maximize the amounts of such assistance received or to be received for all projects in New York state,

(iv) to provide for the municipality's, county's or city of New York's share of the cost of the project, if any;

d. A provision that, in the event that federal assistance which was not included in the calculation of the state payment becomes available to the municipality, county or city of New York the amount of the state payment shall be recalculated with the inclusion of such federal assistance and the municipality, county or city of New York shall pay to the state the amount by which the state payment actually made exceeds the state payment determined by the recalculation.

e. In connection with each contract, the commissioner shall keep adequate records of the amount of the payment by the state and of the amount of federal assistance, if any, received by the municipality, county or city of New York. Such records shall be retained by the commissioner and shall establish the basis for recalculations of the state payment as required herein.

ARTICLE 11

TRANSFER OF FUNCTIONS, EMPLOYEES AND RECORDS; CONTINUITY OF AUTHORITY

§ 240. Transfer of functions. The functions and powers possessed by and the obligations and duties of the public service commission and the department of public service pertaining to the regulation of common carriers, bus companies, contract carriers of passengers by motor vehicle and contract carriers of property by motor vehicle, including such commission and department's investigatory and punitive powers relative thereto, and to its transportation division and the functions and powers possessed by and the obligations and duties of such commission and department relating to grade crossing elimination projects and the jurisdiction of such commission and department over highway-railroad grade crossings and separation structures delegated to either of them by the railroad law or any other law are hereby transferred to the commissioner and the department.

§ 241. Transfer of employees. Upon the transfer of functions to the department pursuant to this article, provision should be made for the transfer to the department of such employees of the public service commission and the department of public service who are engaged in carrying out such functions as the chairman of the public service commission may deem necessary for the exercise of the functions herein transferred to the department. Employees so transferred shall be transferred without further examination or qualification and shall retain their respective civil service classifications and status. For the purpose of determining the employees holding permanent appointments in competitive class positions to be transferred, such employees shall be selected within each class of positions in the order of their original appointment, with due regard to the right of preference in retention of disabled and non-disabled veterans. Any such employee who, at the time of such transfer, has a temporary or provisional appointment shall be transferred subject to the same right of removal, examination or termination as though such transfer had not been made. Employees holding permanent appointments in competitive class positions who are not transferred pursuant to this section shall have their names entered upon an appropriate preferred list for reinstatement pursuant to the civil service law.

§ 242. Transfer of records. The public service commission and the department of public service shall deliver to the commissioner all books, papers, records and property of such commission and department pertaining to the functions transferred pursuant to this article.

§ 243. Continuity of authority. For the purpose of succession to all functions, powers, duties and obligations transferred pursuant to this article, the department shall constitute the continuation of the public service commission and the department of public service, and not a different agency or authority.

§ 244. Continuation of rules and regulations. All rules and regulations, acts, determinations, orders and decisions of the public service commission and the department of public service, pertaining to the functions transferred pursuant to this article, in force at the time of such transfer shall continue in force and effect as rules, regulations, acts, determinations, orders and decisions of the department and the commissioner until duly modified or abrogated by the commissioner.

§ 245. Completion of unfinished business. Any business or other matter undertaken or commenced by the public service commission or the department of public service pertaining to or connected with the functions, powers, obligations and duties transferred pursuant to this article, and pending on the effective date thereof, may be conducted and completed by the commissioner in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the public service commission or the department of public service.

§ 246. Terms occurring in laws, contracts or other documents. Whenever the public service commission or the department of public service is referred to or designated in any law, contract or document pertaining to the functions, powers, obligations and duties transferred pursuant to this article, such reference or designation shall be deemed to refer to the department or the commissioner, as the case may be.

§ 247. Existing rights and remedies preserved. No existing right or remedy of any character shall be lost, impaired or affected by reason of this article.

§ 248. Pending actions and proceedings. No action or proceeding pending on March first, nineteen hundred seventy-one brought by or against the public service commission or the department of public service, and pertaining to or connected with the functions, powers, obligations and duties transferred pursuant to this article, shall be affected by this article, but the same may be prosecuted or defended in the name of the department or the commissioner. In all such actions and proceedings, the department or the commissioner, upon application to the court, shall be substituted as a party.

§ 249. Transfer of appropriations. All appropriations or reappropriations for the functions herein transferred heretofore made to the public service commission or the department of public service, or segregated pursuant to law, to the extent of remaining unexpended or unencumbered balances thereof, whether allocated or unallocated or whether obligated or unobligated, are hereby transferred to and made available for use and expenditure by the department for the same purposes for which originally appropriated or reappropriated and shall be payable on vouchers certified or approved by the commissioner on audit or warrant of the comptroller. Payments for liabilities for expenses of personal service, maintenance and operation heretofore incurred by the public service commission or the department of public service in connection with the functions herein transferred, and for liabilities incurred and to be incurred in completing their affairs in relation to the functions transferred herein, shall also be made on vouchers or certificates approved by the commissioner on audit and warrant of the comptroller.

§ 250. Opinions, determinations, decisions and judgments. All opinions, determinations, decisions and judgments hitherto rendered in a court of competent jurisdiction in an action or proceeding in which the public service commission or department of public service was a party shall continue to be binding and effective with respect to the matters therein determined with the same force and effect as if the department of transportation or commissioner of transportation were a party therein.

§ 251. Codification of changes. The commissioner shall prepare or cause to be prepared for the submission to a session of the legislature a codification of the laws relating to the functions, powers and duties of the public service commission or the department of public service as amended, repealed or modified and other acts related thereto and such other measures as may be appropriate to effectuate the purposes of this article and such acts.

ARTICLE 12

LAWS REPEALED; TRANSFER OF FUNCTIONS; INTERIM FUNCTIONS; TIME TO TAKE EFFECT

§ 260. **Department of public works abolished.** The department of public works in the state government, created, established and continued by section five of the public works law, as last amended by chapter three hundred fifty-eight of the laws of nineteen hundred sixty-one, is hereby abolished.

§ 261. **Transfer of functions.** All of the functions and powers possessed by and all the obligations and duties of the department of public works and the superintendent of public works, except those pertaining to the construction of public buildings, and flood control and shore line and beach erosion control, transferred to the office of general services in the executive department and the conservation department, respectively, are hereby transferred and assigned to, assumed by and developed upon the department of transportation.

§ 262. **Transfer of employees.** Upon the transfer of functions to the department of transportation pursuant to this chapter, provision shall be made for the transfer to the department of transportation of such employees of the department of public works who are engaged in carrying out such functions as the commissioner of transportation may deem necessary for the exercise of the functions of the transportation department. Employees so transferred shall be transferred without further examination or qualification and shall retain their respective civil service classifications and status. For the purpose of determining the employees holding permanent appointment in competitive class positions to be transferred, such employees shall be selected within each class of positions in the order of their original appointment, with due regard to the right of preference in retention of disabled and nondisabled veterans. Any such employee who, at the time of such transfer, has a temporary or provisional appointment shall be transferred subject to the same right of removal, examination or termination as though such transfer had not been made. Employees holding permanent appointments in competitive class positions who are not transferred pursuant to this section shall have their names entered upon an appropriate preferred list for reinstatement pursuant to the civil service law.

§ 263. Transfer of records. The superintendent of public works shall deliver to the commissioner of transportation all books, papers, records and property of the department of public works and the superintendent of public works pertaining to the functions herein transferred.

§ 264. Continuity of authority. For the purpose of succession to all functions, powers, duties, and obligations transferred and assigned to, devolved upon and assumed by it pursuant to this chapter, the department of transportation shall be deemed and held to constitute the continuation of the department of public works and the superintendent of public works and not a different agency or authority.

§ 265. Completion of unfinished business. Any business or other matter undertaken or commenced by the department of public works or the superintendent of public works pertaining to or connected with the functions, powers, obligations and duties hereby transferred and assigned, and pending on the effective date of this chapter, may be conducted and completed by the department of transportation in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the department of public works or the superintendent of public works.

§ 266. Continuance of rules and regulations. All rules, regulations, acts, determinations and decisions of the department of public works and the superintendent of public works pertaining to the functions herein transferred and assigned, in force at the time of such transfer, assignment, assumption or devolution shall continue in force and effect as rules, regulations, acts, determinations and decisions of the department of transportation until duly modified or abrogated by the department of transportation.

§ 267. Terms occurring in laws, contracts and other documents. Whenever the superintendent of public works or the department of public works is referred to or designated in any law, contract or document pertaining to the functions, powers, obligations and duties hereby transferred and assigned, such reference or designation shall be deemed to refer to the commissioner of transportation or the department of transportation, respectively.

§ 268. Existing rights and remedies preserved. No existing right or remedy of any character shall be lost, impaired or affected by reason of this chapter.

§ 269. Pending actions and proceedings. No action or proceeding pending at the time when this chapter shall take effect, brought by or against the superintendent of public works or the department of public works shall be affected by any provision of this chapter, but the same may be prosecuted or defended in the name of the commissioner or department of transportation. In all such actions and proceedings, the department of transportation, upon application to the court, shall be substituted as a party.

§ 270. Transfer of appropriations heretofore made to department of public works. All appropriations or reappropriations for the functions herein transferred heretofore made to the department of public works, or segregated pursuant to law, to the extent of remaining unexpended or unencumbered balances thereof, whether allocated or unallocated and whether obligated or unobligated, are hereby transferred to and made available for use and expenditure by the department of transportation for the same purposes for which originally appropriated or reappropriated and shall be payable on vouchers certified or approved by the commissioner of transportation on audit and warrant of the comptroller. Payments for liabilities for expenses of personal service, maintenance and operation heretofore incurred by the department of public works in connection with the functions herein transferred, and for liabilities incurred and to be incurred in completing its affairs in relation to the functions transferred herein, shall also be made on vouchers or certificates approved by the commissioner of transportation on audit and warrant of the comptroller.

§ 271. Codification of changes. The commissioner of transportation shall prepare or cause to be prepared for submission to the next regular session of the legislature a codification of the laws relating to the functions, powers and duties of the department of transportation as amended, repealed or modified by this chapter and other acts related thereto and such other measures as may be appropriate to effectuate the purposes of this chapter and such acts.

§ 272. Time to take effect. This act shall take effect September first, nineteen hundred sixty-seven.

ARTICLE 13
MASS TRANSPORTATION

§ 300. Declaration of policy. In order to assure effective discharge of state responsibility with respect to the provision of adequate mass transportation services to the inhabitants of the State, the department may enter into an agreement with any municipal corporation to pay on behalf of the State a share of the project cost of any municipal project undertaken in accordance with the provisions of any federal grant or project approval received from the Federal Urban Mass Transportation Administration or the Federal Highway Administration.

The state share of a municipal project undertaken with federal assistance from the Federal Urban Mass Transportation Administration or the Federal Highway Administration may be fifteen percent of the project cost.

In the event a municipal propect is undertaken with federal assistance as authorized by the Federal Aid Highway Act of l973, and the federal assistance provided is less than eighty percent of the project cost, the state share may be increased by an amount equivalent to the difference between the federal assistance received and eighty percent of the project cost provided, however, that the maximum state share of any municipal project shall not exceed twenty-five percent of the project cost.

§ 301. Definitions. Whenever used in this article, unless a different meaning clearly appears from the context: 1. "Mass transportation capital project." The acquisition, construction, reconstruction or improvement with federal assistance of any rapid transit, railroad, omnibus, marine transportation or other mass transportation capital facility and any capital equipment used in connection therewith.

2. "Municipal project." Any mass transit capital project undertaken by a municipal corporation.

3. "Federal assistance." Funds available, other than by loan, from the

federal government to any municipal corporation, either directly or through allocation by the state, for any mass transportation capital project.

4. "Municipal corporation." A municipal corporation includes a city, town, village, county, not including a county wholly contained within a city, special transportation district, public benefit corporation or other public corporation or two or more of the foregoing acting jointly.

5. "Project cost." The actual cost of any municipal project or the estimated reasonable cost thereof as determined by the commissioner, whichever is lower, plus any direct incidental costs approved by the state comptroller.

§ 302. Application for assistance. The commissioner is hereby authorized to receive and review applications from municipal corporations for state aid for municipal projects, and to approve such applications, within the amounts appropriated therefor, as are part of or consistent with a statewide comprehensive master plan for transportation promulgated by the commissioner and approved by the governor or, in the absence of any current comprehensive master plan sound transportation development policy and planning concepts. The commissioner shall submit copies of any application so approved to the governor, to the director of the budget and to the office of planning services with such recommendations as he may deem appropriate.

The commissioner is hereby authorized to prescribe such rules and regulations as he may deem appropriate to effectuate the purposes of this article, including but not limited to rules and regulations governing the form, content and submission of applications by municipal corporations for state aid for municipal projects pursuant to the provisions of this article.

§ 303. State appropriation. No moneys shall be expended for the state share of any municipal project unless and until the project has been approved by the commissioner and unless and until such project shall have been recommended by the governor in a budget bill which specifies the project to be acquired, constructed, reconstructed or improved, the estimated project cost, the estimated federal assistance to be received and the estimated state and local shares of the project cost to be required during the state fiscal year for which the appropriation is recommended and shall have been approved by the legislature for such state fiscal year.

§ 304. Project grant procedure. State moneys may be expended for any municipal project pursuant to a contract entered into by the commissioner, in the name of the state, and the municipal corporation undertaking such project. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:

a. An estimate of the reasonable cost of the project as determined by the commissioner.

b. An agreement by the commissioner to pay to or on behalf of the municipal corporation, following completion of the project, or during the undertaking thereof, in the form of progress payments, as may be agreed upon by the parties and subject to the rules and regulations of the commissioner, the state share of the project cost as he may determine in accordance with section three hundred of this article.

c. An agreement by the municipal corporation:
(1) To proceed expeditiously with, and complete, the project in accordance with plans approved by the commissioner;
(2) To commence and continue operation of the project on completion of the project, and not to discontinue operation or dispose of the project without the approval of the commissioner;
(3) To provide for the payment of the municipal corporation's share of the cost of the project, and
(4) To include in its planning for the project, to the extent mutually deemed appropriate, consideration and planning for joint development as

defined in section fourteen-d of the transportation law relating to the environment of the area in which the project is to be constructed.

d. A provision that, in the event that federal assistance which was not included in the calculation of the state payment pursuant to section three hundred of this article becomes available to the municipal corporation, the amount of the state payment shall be recalculated with the inclusion of such additional federal assistance and the municipal corporation shall either (1) pay to the state the amount by which the state payment actually made exceeds the state payment determined by the recalculation or, (2) if such additional federal assistance has not been received by the municipal corporation, authorize the state to receive such amount from the federal government and to retain an appropriate amount thereof. The commissioner may adopt rules and regulations governing the making and enforcing of contracts pursuant to this subdivision. Contracts entered into pursuant to this subdivision shall be subject to approval by the state comptroller, the director of the budget and by the attorney general as to form. All payments by the state pursuant to such contracts shall be made after audit by and upon the warrant of the comptroller on vouchers approved by the commissioner.

§ 305. Reimbursement of state overpayments. The commissioner shall keep adequate records of the amount of the payments made by the state in connection with each contract concerning a municipal project authorized by this article and the amount of the federal assistance actually received for such municipal project. Such records shall be retained so as to establish a basis for application by the commissioner for reimbursement to the state of payments made by the state in excess of the recalculated state share of the project cost. The commissioner is hereby authorized to make such applications in appropriate cases.

§ 306. Progress reporting. The commissioner shall prepare and file annually on or about the first of December with the governor, the office of planning services, and the director of the budget a report on the scope and results of construction undertaken in accordance with this article.

* ARTICLE 15

TRANSPORTATION COORDINATING COMMITTEES

* NB Expired June 30, 1983

* NB There are 2 Article 15's

*** § 400. Legislative findings.** The legislature hereby finds and declares that:

1. Transportation of people and goods is vital to the economic and social well-being of the metropolitan area embracing the counties of Nassau, Putnam, Rockland, Suffolk and Westchester and the city of New York.

2. General purpose local governments of the metropolitan area, the state of New York, and local, regional and state agencies have a strong common interest in coordinating and cooperating in performing transportation planning to meet local, regional, state and federal goals and objectives.

3. The transportation, land use, and economic planning and development activities of public and private agencies within the metropolitan area are of such magnitude and complexity and of such potential degrees of mutual impact, as to make necessary a formally coordinated, comprehensive, and continuing transportation planning and decision process carried on cooperatively by local governments and agencies and the state.

4. Titles twenty-three and forty-nine of the United States code require such a transportation planning and programming process for the metropolitan area.

5. Since nineteen hundred seventy-five, the Mid-Hudson south, New York city, and Nassau-Suffolk transportation coordinating committees have been recognized by the state and federal governments as appropriate and effective subregional forums for cooperative transportation decision making by principal elected officials of general purpose local governments and local, regional, and state transportation agencies.

6. The members of the Mid-Hudson south, New York city, and Nassau-Suffolk transportation coordinating committees have agreed to join together to form the council of transportation coordinating committees and, acting through the council, to constitute the federally required metropolitan planning organization for the metropolitan area.

7. Pursuant to the federal regulations, the council of transportation

coordinating committees has been designated by agreement among the units of general purpose local governments and the governor as the metropolitan planning organization responsible, in cooperation with the state and publicly owned operators of mass transportation services, for carrying out the urban transportation planning process specified in 23 CFR 450 and 49 CFR 613 and other applicable federal regulations.

8. It is the purpose of this legislation to delineate the roles and responsibilities and administrative, decision making, and staffing arrangements for the transportation coordination committees and the council to carry out transportation planning and programming to continue the area's qualification for federal transportation assistance.

* NB Expired June 30, 1983

* NB There are 2 § 400's

*** § 401. Continuation of transportation coordinating committees; committee membership.** 1. The Mid-Hudson south transportation coordinating committee is continued, with voting membership to include:

(a) the Westchester county executive;

(b) the Putnam county executive;

(c) the chairman of the Rockland county legislature;

(d) the mayor of the city of Yonkers, whose tenure of membership shall be determined by the Mid-Hudson south transportation coordinating committee;

(e) the chairman of the metropolitan transportation authority; and

(f) the commissioner of the New York state department of transportation.

2. The Nassau-Suffolk transportation coordinating committee is continued, with voting membership to include:

(a) the Nassau county executive;

(b) the Suffolk county executive;

(c) the chairman of the metropolitan transportation authority; and

(d) the commissioner of the New York state department of transportation.

3. The New York city transportation coordinating committee is continued, with voting memberhsip to include:

(a) the chairman of the New York city planning commission, representing the mayor of the city of New York;

(b) the commissioner of the New York city department of transportation, representing the mayor of the city of New York;

(c) the chairman of the metropolitan transportation authority; and

(d) the commissioner of the New York state department of transportation.

* NB Expired June 30, 1983

* NB There are 2 § 401's

*** § 402. Council membership.** 1. The council of transportation coordinating committees is hereby created and shall have as voting members:

(a) the Westchester county executive;

(b) the Putnam county executive;

(c) the chairman of the Rockland county legislature;

(d) the Nassau county executive;

(e) the Suffolk county executive;

(f) the chairman of the New York city planning commission, representing the mayor of the city of New York;

(g) the commissioner of the New York city department of transportation, representing the mayor of the city of New York;

(h) the chairman of the metropolitan transportation authority; and

(i) the commissioner of the New York state department of transportation.

The foregoing representation of the participating units of government is not intended to indicate a proportional or any other kind of weighting for voting purposes and such representation shall remain in effect only as long as council decisions are reached by consensus as defined in this article.

2. Advisory, non-voting membership on the council and on each transportation coordinating committee shall include the federal highway

administration, urban mass transportation administration, United States environmental protection agency, the New York state department of environmental conservation, and the port authority of New York and New Jersey.

3. Members of all transportation coordinating committees and the council may be represented by designated substitutes. Such designation shall be in writing to the secretary of the council.

* NB Expired June 30, 1983

* NB There are 2 § 402's

*** § 403. Officers.** 1. The commissioner of transportation shall serve as the permanent co-chairperson of the council with functional responsibility for agency operations. There shall be a rotating council co-chairperson, elected each year in turn by one of the transportation coordinating committees from among its members. The rotation among transportation coordinating committees for this purpose shall be decided by the council.

2. The New York state department of transportation shall perform secretarial services for the council.

3. Each transportation coordinating committee shall elect officers according to its bylaws or operating procedures, except that the New York state department of transportation shall perform secretarial services for each transportation coordinating committee.

* NB Expired June 30, 1983

* NB There are 2 § 403's

*** § 404. Voting by consensus.** All actions taken by the transportation coordinating committees and by the council shall be by the unanimous vote of affected parties, with the co-chairpersons judging the extent to which members are affected by proposed committee or council actions and declaring consensus or the lack thereof, as the case may be.

* NB Expired June 30, 1983

* NB There are 2 § 404's

*** § 405. Central staff.** To meet areawide transportation planning needs and to provide centralized services to the transportation coordinating committees, the council shall provide for a central staff, and a staff director appointed by the council from a list provided by the permanent co-chairperson. The staff director shall be accountable to the council for results of that portion of the transportation planning program assigned to the central staff, and for the economy and efficiency of the central staff operation. Central staff activities shall be limited to transportation and transportation related matters and may include:

1. data collection, monitoring and analysis;

2. demographic analysis and forecasting;

3. strategic transportation planning;

4. regional transportation systems planning;

5. travel simulation and modelling and other technical planning and planning services;

6. mapping services;

7. administrative services including contract administration; and

8. special studies of regional significance.

* NB Expired June 30, 1983

* NB There are 2 § 405's

*** § 406. Unified planning work program.** 1. The council shall establish goals, objectives, criteria, and standards for the development of work programs for the use of federal and other planning funds.

2. The unified planning work program shall comprise the following major work elements:

(a) central staff;

(b) transportation coordinating committees staff;

(c) subregional pass through;

(d) transit operators planning program; and

(e) special studies.

3. (a) The work program of the central staff shall be determined annually by the council.

(b) A method for distributing funds for special studies shall be determined annually by the council.

* NB Expired June 30, 1983

* NB There are 2 § 406's

*** § 407. Application for urban mass transportation funds.** 1. The department shall, on behalf of the council, make application annually to the urban mass transportation administration and to other federal agencies as may be appropriate, for funds to support the council's planning program. The department shall make such funds, as well as funds received from the federal highway administration, available to the council for its decision on their use and distribution. The department shall be the urban mass transportation administration grant applicant for the central staff, transportation coordinating committee staff, and subregional pass through work elements of the unified planning work program. Applicants for urban mass transportation administration grants to support the transit operators planning and special studies work elements shall be determined annually in the unified planning work program.

2. The council shall authorize the department and others as appropriate, to accept on behalf of the council, the transfer of current grants that have been awarded to the tri-state regional planning commission.

3. The unified planning work program, as endorsed by the tri-state

regional planning commission for federal fiscal year nineteen hundred eighty-one (tri-state program year nineteen hundred eighty-one--eighty-two), shall not be altered by the council, except by consensus of the council members as defined herein.

* NB Expired June 30, 1983

* NB There are 2 § 407's

*** § 408. Allocation of funds for program year starting July first, nineteen hundred eighty-two.** For the program year starting July first, nineteen hundred eighty-two, the allocation of funds to be made for the above major program elements except for special studies, shall be determined by the council.

* NB Expired June 30, 1983

* NB There are 2 § 408's

*** § 409. Subregional pass through funds for program year starting July first, nineteen hundred eighty-two.** For the program year starting July first, nineteen hundred eighty-two, subregional pass through funds shall be made available to each county and city in proportion to its nineteen hundred eighty population; however, no county shall receive less than twenty-five thousand dollars.

* NB Expired June 30, 1983

*** § 410. Transportation plans.** 1. The council shall develop and review annually areawide transportation goals and objectives, considering federal and state policies and requirements, for the guidance of its constituent transportation coordinating committees.

2. Each transportation coordinating committee shall develop and review and update as necessary, a transportation coordinating committee's transportation plan, consisting of long-range and short-range elements, including transportation systems management components, and shall submit the plan to the council.

3. Upon receipt of the transportation coordinating committee's transportation plans, the council shall examine them with respect to its goals and objectives, reconcile any differences, inconsistencies, or conflicts by consensus as defined herein, integrate the plans into an areawide transportation plan, and endorse the resultant plan as meeting the requirements of 23 CFR 450 and 49 CFR 613.

* NB Expired June 30, 1983

*** § 411. Transportation improvement program.** 1. Each transportation coordinating committee shall develop and update annually a transportation coordinating committee transportation improvement program in cooperation with state and local officials, regional and local transit operators, recipients authorized under section five of the Urban Mass Transportation Act (49 USC 1604), and with input from other affected transportation and regional and local planning and implementing agencies. The transportation improvement program shall consist of improvements recommended from the short-range and long-range elements of the transportation plan developed under this article, and continuing or special planning studies.

2. The council shall incorporate the transportation improvement program of transportation coordinating committees annually into an areawide transportation improvement program, including projects of a regional nature recommended by the program, finance, and administration committee as initiated pursuant to title IX of chapter one of the United States code, and shall endorse the program as meeting the requirements of 23 CFR 450 and 49 CFR 613, provided that the program is consistent with plans adopted by the council. Additions, deletions, or any other changes to the transportation improvement program shall not be made by the council except by consensus of its members as defined herein.

3. The transportation improvement program as endorsed by the tri-state regional planning commission for federal fiscal year nineteen hundred eighty-three, shall not be altered by the council except by consensus of council members as defined herein.

* NB Expired June 30, 1983

*** § 412. Program, finance, and administration committee.** 1. The council shall establish a program, finance, and administration committee, to be composed of staff representatives of the New York state department of transportation, the metropolitan transportation authority, and one to be appointed by each of the transportation coordinating committees. The central staff director shall serve as secretary to the committee. The co-chairpersons of the council shall appoint the chairperson of the committee from among the committee members.

2. The program, finance and administration committee shall be responsible for overseeing day-to-day operations of the metropolitan planning organization, including the following activities:
(a) monitoring and coordinating progress of the council's unified planning work program to assure adherence to budgets and consistency with federal regulations and local, state and federal objectives, and
(b) minor revisions to budgets and other aspects of the work program, as necessary during the program year.

3. The program, finance and administration committee shall, in cooperation with the transportation coordinating committees, develop annually a draft unified planning work program consistent with the requirements of 23 CFR 450 and 49 CFR 613, for recommendation for endorsement by the council at the council's annual meeting. The work program shall include central and subregional staff activities, council member activities, and special studies.

4. Upon the initiation by any council member of a project of regionwide significance through the appropriate transportation coordinating committees, or changes to such projects, which must receive metropolitan planning organization endorsement during the interval between council meetings, the program, finance and administration committee shall be authorized to act for the council to include such project or make such changes with respect thereto in the council's transportation improvement program. To the extent possible such transportation improvement program changes shall be recommended by the

program, finance and administration committee to the council at its next meeting. In the case that approval of affected transportation coordinating committees cannot be secured, then the council shall meet to decide the issue.

5. Upon the endorsement by a transportation coordinating committee of a change in its transportation improvement program, which change must for some reason be incorporated in the council program during the interval between the council's annual meetings, the program, finance and administration committee shall be authorized to act for the council to make such incorporation and shall make such incorporation, provided that the change is consistent with plans adopted by the council.

6. Upon the request of any council member of a change in the council's unified planning work program, including the program budget or budgets, which for some reason must receive metropolitan planning organization endorsement during the interval between the council meetings, the program, finance and administration committee shall be authorized to act for the council to make such a change. All actions taken by the program, finance and administration committee concerning the unified planning work program shall be reported to all council members within five working days. Such actions shall be effective unless a negative response is received from a council member within ten working days.

* NB Expired June 30, 1983

*** § 413. Nonregional transportation coordinating committees' actions.** 1. The following actions by the transportation coordinating committees, to be taken when necessary, shall be accepted as official metropolitan planning organization actions without formal ratification by the council:

(a) The delineation of and keeping up-to-date, subregional urban area boundaries in cooperation with the state.

(b) The designation of appropriate federal-aid urban highway systems subject to concurrence of the department of transportation.

(c) The making of minor modifications to the transportation coordinating committees' transportation improvement program, including minor changes in scope of endorsed projects, substitutions by the initiating agency of projects of similar scope, and deletions or additions of subregional projects within available funding. A complete and current record of such actions shall be maintained by the central staff and be available for inspection and use by council members.

* NB Expired June 30, 1983

*** § 414. Coordination with adjacent metropolitan planning organizations.** Within six months from the effective date of this article, the council shall develop procedures for coordinating its plans and programs, and its planning and programming processes, with adjacent metropolitan planning orgnizations in the states of New York, New Jersey, and Connecticut. The council shall appoint a representative to work with these metropolitan planning organizations and to report back to the council with recommendations on this matter as soon as possible.

* NB Expired June 30, 1983

*** § 415. Meetings and agendas.** 1. Each transportation coordinating committee shall have an annual meeting, held each year between January fifteenth and February fifteenth. Its business agenda shall include:

(a) Election of chairperson;

(b) Endorsement of a transportation coordinating committee, transportation improvement program with an annual element;

(c) Endorsement of a transportation coordinating committee's transportation plan;

(d) Other business items requested by any member.

2. Special transportation coordinating committee meetings may be called at the request of any member of the transportation coordinating committees at any time, upon written request to the secretary of the transportation coordinating committee.

3. The secretary shall be responsible for scheduling all meetings.

4. A quorum for any transportation coordinating committee meeting

shall be two-thirds of its voting members.

5. The council shall have an annual meeting, held each year as soon as possible after all transportation coordinating committees annual meetings have been concluded, but no later than March fifteenth. The business agenda of the annual meeting of the council shall include:
(a) Endorsement of the areawide transportation improvement program and annual element;
(b) Endorsement of the areawide transportation plan;
(c) Adoption of the unified planning work program;
(d) Other business items requested by any members.

6. Special council meetings may be called at any other time upon written request of any member of the council to the secretary.

7. The secretary shall be responsible for the scheduling of all meetings, including special meetings.

8. A quorum for any council meeting shall be two-thirds of its voting members.
* NB Expired June 30, 1983

*** § 416. Central staff operation.** 1. The department shall provide for the financial operations of the central staff and ensure that the central staff activities are in compliance with applicable laws and regulations. The relative responsibilities of the council and the department for the central staff are detailed below. In all cases the responsibilities of the council for the central staff shall be carried out on a day-to-day basis by the program, finance and administration committee.

2. The council shall be responsible for:
(a) program results:
(i) Assuring that the desired results or benefits of the central staff's work are being achieved, including that the unified planning work program activities are on schedule, of proper quality, and are

documented and reported on in an appropriate manner.

(ii) Assuring that the urban transportation planning objectives established by the federal regulations and the council itself are being met, including that the unified planning work program elements are responsive to federal planning requirements and area transportation issues and problems.

(b) Economy and efficiency of central staff operation:

(i) Assuring that desired results are achieved at lowest cost, including that central staff size, salary levels and other costs are appropriate and planning methods well chosen.

(ii) Assuring that the central staff is managing or utilizing its resources (personnel, property, space, etc.) in an economical and efficient manner, including that management information systems, administrative procedures, organizational structures and other management tools are adequate.

(c) Selecting consultants to perform activities in the central staff work program as provided for in the approved unified planning work program and negotiating professional services agreements, except that the department shall be entitled to have a representative in all consultant selection decisions and fee negotiations that affect contracts held by the department on behalf of the council;

(d) Approving all required task work programs (task amplifications) and preparing those required for central staff activities;

(e) Providing funds for a central staff director and directing him/her to:

(i) Manage central staff planning activity to ensure continued compliance with federal and state regulations;

(ii) Prepare and maintain work budgets for all central staff planning activities and cash flow budgets for central staff operations;

(iii) Assist the department in establishing acceptable ledgers and accounting procedures to maintain complete and accurate records pertaining to revenues, expenses, work performed, and cash on hand;

(iv) Assist the department in preparing appropriate documentation of payrolls, time records, grant charges, invoices, vouchers, purchases, and other expenses in accordance with state and federal requirements;

(v) Assist the department with the establishment and maintenance of central staff-related accounting records and bookkeeping procedures;

3. The department shall be responsible for:

(a) Prefinancing the central staff operation for the council prior to reimbursement;

(b) Employing central staff and paying central staff salaries and fringe benefits;

(c) Paying central staff operating expenses and program costs in accordance with the approved unified planning work program;

(d) Controlling central staff revenues, expenditures, assets, and liabilities to the extent necessary to meet the department's obligations with respect to the state funds involved;

(e) Purchasing, receiving, accounts payable, payroll and billings;

(f) Assuring that the central staff operation is in full compliance with all applicable federal, state, and local laws and regulations, including that all central staff activities are eligible for reimbursement and that all matching requirements are met.

4. New York state shall provide the non-federal share of central staff financing as detailed in the unified planning work programs.

* NB Expired June 30, 1983

*** § 417. Council to act as the metropolitan planning organization for purposes of receipt of federal transportation assistance.** Upon adoption of a joint resolution by the transportation coordinating committees and approval of such resolution by the governor, the council shall be designated as the metropolitan planning organization for purposes of receipt of federal transportation assistance for the New York portion of the New York, N.Y.--Northeastern New Jersey urbanized area. Upon adoption and approval of such resolution the authority of bi-state regional planning commission to act as the metropolitan planning organization for such area shall cease.

* NB Expired June 30, 1983

* ARTICLE 15

AIR TRANSPORTATION FACILITIES AND

SERVICES AT STEWART AND REPUBLIC AIRPORTS

* NB There are 2 Article 15's

*** § 400. Air transportation facilities and services at Stewart and Republic airports.** 1. In order to meet present and future state needs with respect to the provision of adequate, safe and efficient air transportation facilities and services to the public, and to promote the economic development and well-being of the state, the planning, development, maintenance and operation of such facilities and services at Stewart and Republic airports may be carried out by the department and the commissioner in accordance with the provisions of this article.

2. The following terms, as used in this article shall mean:

(a) "Air transportation facilities" shall mean aircraft and developments such as airports, air terminals, runways, hangars, control towers, ramps, taxiways, aprons, wharves, bulkheads, buildings, structures, equipment, parking areas, improvements, facilities and any real property necessary, convenient or desirable for or relating to the landing, taking off, accommodation and servicing of aircraft, or for the loading, unloading, interchange or transfer of passengers, baggage or cargo, or otherwise for the accommodation, use or convenience of passengers, carriers, crews and employees. It shall also mean facilities providing access to airports or air terminals, including highways, access roads, driveways and appurtenances, devices and structures incidental thereto.

(b) "Air transportation purposes" shall mean the effectuation, establishment, acquisition, construction, rehabilitation, improvement, maintenance, extension, or operation of air transportation facilities or services owned, leased, operated or provided by the department, or by others pursuant to agreement with the department, at Stewart and/or Republic airports.

(c) "Department" shall mean the department of transportation of the state of New York.

(d) "Commissioner" shall mean the commissioner of transportation of the state of New York.

(e) "Stewart and Republic airports" shall mean those airports, and facilities and surrounding areas under the jurisdiction of the metropolitan transportation authority or any subsidiary public benefit corporation, located at (in the case of Stewart airport) the county of Orange, towns of Newburgh and New Windsor; and (in the case of Republic airport) in the county of Suffolk, town of Babylon.

(f) "Real property" shall mean lands, structures, franchises and interests in land, including air space, air rights, waters, lands under water and riparian rights, and any and all things and rights included within said term, and includes not only fee simple absolute but also any and all lesser interests, including but not limited to easements, rights of way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise.

(g) "Aircraft" shall mean aircraft of all types, including but not limited to airplanes, airships, dirigibles, helicopters, gliders, seaplanes, or any other contrivance now or hereafter used for the navigation of or flight in air or space.

(h) "Stewart airport commission" shall mean the commission established by section four hundred one of this article.

(i) "Republic airport commission" shall mean the commission established by section four hundred two of this article.

3. In order to effectuate the purposes of this article:

(a) The commissioner, for and on behalf of the people of the state of New York, may acquire any and all air transportation facilities necessary for air transportation purposes, pursuant to the eminent domain procedure law, or by purchase, gift, grant, transfer, assignment, contract, lease or other arrangement.

(b) The department may, on such terms and conditions as the commissioner determines necessary, convenient or desirable, establish, construct, effectuate, operate, maintain, renovate, improve, extend or repair air transportation facilities at Stewart and Republic airports, or may provide therefor by contract, lease or otherwise, with any person, firm, corporation, municipality, or governmental unit, agency or instrumentality. In connection with the operation of any such air terminal, the department may establish, construct, effectuate, operate, renovate, maintain, improve, extend or repair, or may provide therefor by contract, lease or otherwise, any related services or activities the commissioner deems necessary, convenient or desirable.

(c) The department may establish, levy and collect or cause to be established, levied and collected, or join with others in the establishment, levying and collection, of such fares, tolls, rentals, rates, charges and other fees as the commissioner deems necessary, convenient or desirable for the use or operation of any air transportation facilities, services, equipment or activities operated at, serving or incidental to Stewart or Republic airports.

(d) The commissioner may establish such rules, regulations and procedures governing the use, operation and occupancy of air transportation facilities and related facilities, equipment, services and activities at, serving or incidental to Stewart and Republic airports as he may deem necessary, convenient or desirable. Non-compliance with such airport rules and regulations shall be a violation of law punishable by a fine not to exceed two hundred fifty dollars unless a different fine is expressly provided in another section of law.

(e) The department may apply for, accept, receive and utilize grants of property, money and services and other assistance offered or made available to it by any person, government or agency or instrumentality thereof for any use within the scope of its functions, powers, duties or responsibilities under this article.

(f) The department may do all things it deems necessary, convenient or desirable to manage, control and direct the maintenance and operation of air transportation facilities and related facilities, equipment, activities and services, at Stewart and/or Republic airports; provided, however, that the department shall take no action which would be inconsistent with or supersede the provisions of subdivision three of section four hundred two of this article.

(g) The department may conduct or participate in demonstration projects relating to air transportation facilities and services at, serving or incidental to Stewart or Republic airports.

(h) Upon the effective date of this article all rights, title and interest in all assets, equipment and property, both tangible and intangible, used in connection with the ownership, planning, development, maintenance and operation of Stewart and Republic airports of the metropolitan transportation authority and/or any subsidiary corporation of such authority are hereby transferred to the department of transportation. Any and all appropriations or reappropriations made in any capital projects fund or state purposes account to the metropolitan transportation authority in connection with either Stewart and/or Republic airports which remain unencumbered on the effective date of this article are hereby transferred to the department of transportation. The commissioner, subject to the approval of the division of the budget, shall enter into an agreement or agreements with the metropolitan transportation authority and/or any subsidiary corporation of such authority and authorization is hereby granted to the metropolitan transportation authority and/or any subsidiary corporation of such authority to enter into such agreement or agreements to transfer and assign to the department of transportation any other rights and obligations and contract rights and obligations resulting from or arising out of the ownership, planning, development, maintenance and/or operation of Stewart and/or Republic airports, and notwithstanding the provisions of chapter four hundred seventy-two of the laws of nineteen hundred seventy-one, the metropolitan transportation authority and/or any subsidiary corporation of such authority is authorized to contract with the commissioner to provide service as an airport operator for Stewart and/or Republic airports. In lieu of contracting with the metropolitan transportation authority and/or any subsidiary corporation of such authority for such services, the commissioner may contract for the operation of Stewart and/or Republic airports with any qualified operator. Any service contract shall contain the clause that the term of such contract with respect to either Stewart airport or Republic airport or both shall be subject to cancellation upon six months' notice from the commissioner. Such notice shall be given only after the consultation, guidance, advice and assistance relative to such action by either the Stewart airport commission or the Republic airport commission or both with respect to such service contract as it affects either Stewart airport or Republic airport or both respectively. Until the effective date of any such contract between the metropolitan transportation authority and/or subsidiary corporation of such authority or another entity and the commissioner to provide airport operator services at Stewart and/or Republic airports respectively, the metropolitan transportation authority through its subsidiary metropolitan airports authority shall continue to provide the service as an airport operator for both Stewart and Republic airports with the costs and expenses of such activities throughout the period of the effective date of this article through the effective date of such contract being the obligation of the metropolitan transportation authority, but not longer than one year from the effective date of this article.

Notwithstanding anything to the contrary contained in this paragraph on or after the effective date of this article, interests in the real property and air transportation facilities at Stewart airport hereinafter set forth shall be leased by the state to the United States government upon terms and consideration and for a term to be mutually agreed upon by the commissioner and said United States government with the concurrence of the adjutant general for the purpose of establishing an air national guard facility:

(i) For such temporary period or periods as the adjutant general deems necessary, and for the purposes of an interim air national guard facility, pending construction of a permanent facility--

Such real property and such air transportation facilities as shall be agreed upon by the commissioner and the United States government with the concurrence of the adjutant general. The federal government has appropriated five hundred thousand dollars for rehabilitation of the said interim air national guard facility. Upon relocation of the air national guard to said permanent facilities all improvements constructed by the federal government shall become the property of the state of New York.

(ii) For a term of fifty years with option for renewal for the purposes of a permanent air national guard facility--

Building 105 with adjacent parking compound located in rear of building, and the land commonly known as the "pad area" situated between runways twenty-seven and thirty-four and the eastern boundary of the airport property, this site being the location upon which a permanent air national guard facility will be constructed.

(i) In connection with any improvements on real property or any new leases or renewal of leases for real property made after the department assumes jurisdiction over an air transportation facility, whether owned by the state or others, that are devoted to non-aviation purposes in whole or substantial portion thereof, the commissioner shall enter into agreements to pay, or make provisions for the payment of, annual sums in lieu of taxes to any municipality or political subdivision of the state in which such improvements are located. Such non-aviation purposes shall include but not be limited to motel, hotel, restaurant, transportation services other than aircraft, manufacturers whose products are not used exclusively at the airport, general office space and such other buildings and improvements as determined by the commissioner to be not exclusively for aviation purposes. In regard to such non-aviation and substantial portion related determinations and any proration of use or purpose for determination of in lieu of tax payments, such determinations shall be in accordance with the recommendations made by the Stewart airport commission or Republic airport commission and the affected municipalities or politial subdivisions, respectively.

Notwithstanding the foregoing provisions of this subdivision if an agreement is made between the Stewart airport commission or the Republic airport commission and all municipalities or political subdivisions with respect to payments in lieu of taxes or the definition of "non-aviation purposes" such agreements shall be binding upon the commissioner with respect to such subjects, provided, however, that if there is no such agreement among all the aforementioned parties, the commissioner shall make such determinations based upon the recommendations of all the parties.

4. Once the Stewart airport commission and/or the Republic airport commission have been established, the commissioner and/or the department shall effectuate the authorizations, powers and/or duties set forth in this article with respect to Stewart airport and/or Republic airport

only following the consultation, guidance, advice, and assistance of the Stewart airport commission and/or the Republic airport commission, respectively.

5. No toxic waste site or center shall be located or maintained at either Stewart airport including the surrounding area as contained in the metropolitan transportation authority project map number one thousand filed in the Orange county clerk's office on August thirteenth, nineteen hundred seventy-one or Republic airport.

* NB There are 2 § 400's

*** § 401. Stewart airport commission.** 1. Upon assumption by the department of transportation of jurisdiction over the airport facility and surrounding area located in the county of Orange, known as Stewart airport, there shall thereupon be created a Stewart airport commission. This commission will be an advisory council to the commissioner with respect to administration and management of the Stewart airport facilities and its surrounding areas with respect to projects to be undertaken and operations and management of the facilities at such airport. The commission shall be composed of ten members of which six must be residents of Orange county, two must be residents of Dutchess county and two residents from Ulster county. By virtue of their offices, the commissioner of transportation or the commissioner's designee, the Orange county executive, the Dutchess county executive and the chairperson of the Ulster county legislature shall be ex officio members of the commission. The members of the commission shall be appointed by the governor with the advice and consent of the senate and, except for the initial appointment terms, shall serve for a term of four years. However, two of the appointments must be from a list submitted by the temporary president and majority leader of the senate, and two must be from a list submitted by the speaker of the assembly. Initial appointments shall be to staggered terms with three of the nominees of the governor being made to initial one-year terms and the other three nominees to initial four-year terms, the members nominated by the speaker of the assembly to initial two-year and three-year terms, respectively, and the members nominated by the temporary president and majority leader of the senate to initial two-year and three-year terms, respectively. If any member shall thereafter no longer meet the residency requirement of his or her appointment, such position shall be declared vacant. In the event of a vacancy, the vacancy shall be filled in the same manner as the initial appointments except that the term shall be for the unexpired portion of the term of such members. All such members shall be deemed officers of the state in connection with the provisions of section seventeen of the public officers law. The members of the commission shall appoint a chairman from among their number. Members shall not receive a salary or other compensation, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

2. The Stewart airport commission shall assist in the development of a program relative to the administration and management of the Stewart airport and to advise the commissioner of transportation with regard to such other programs relative to the Stewart airport as he may undertake. Such program shall include, but not be limited to identification of future capital needs, examining the means and methods of financing such future capital needs, the promotion and examination of the financing means and methods for the economic development of the area around the airport, the joining together of such economic development and the airport operations, the identification and implementation of ways of working with the local community to accomplish the program and the identification of non-aviation uses and purposes and prorations of use or purposes for determinations of in lieu of tax payments. Once the commission has been established, the commissioner and/or the department shall effectuate the authorizations, powers and/or duties set forth in section four hundred of this article only following the consultation, guidance, advice and assistance of the commission. The Stewart airport commission shall meet at least six times a year at the call of the commissioner of transportation or the chairman of the commission and shall keep a record of all its proceedings and recommendations. Staff services for the commission shall be performed by personnel of the department of transportation. In carrying out the functions and responsibilities of the commissioner and the commission, the commissioner shall designate an executive secretary from among the staff

of the department of transportation who will act as the administrative agent of the commission and assist the commission in fulfilling its duties and functions.

* NB There are 2 § 401's

*** § 402. Republic airport commission.** 1. Upon assumption by the department of transportation of jurisdiction over the airport facility and surrounding area located in the county of Suffolk, known as Republic airport, there shall thereupon be created a Republic airport commission. This commission will be an advisory council to the commissioner with respect to administration and management of the Republic airport facilities and its surrounding areas with respect to projects to be undertaken and operations and management of the facilities at such airport. The commission shall be composed of nine members who are residents of Nassau county or Suffolk county, one of whom shall be appointed by the governor without recommendation from any other person, four of whom shall be appointed by the governor upon the recommendation of the temporary president of the senate, and four of whom shall be appointed by the governor upon the recommendation of the speaker of the assembly. For each appointment upon a recommendation, the recommender shall submit a list of no fewer than three persons, from which the governor shall appoint one. All such members shall be appointed for a term of four years, except in the case that a vacancy occurs and is filled before the expiration of a member's term, the member appointed to fill such vacancy shall be appointed to the remainder of such term. By virtue of such commissioner's office, the commissioner of transportation or the commissioner's designee shall be an ex officio member of the commission. All such members shall be deemed officers of the state in connection with the provisions of section seventeen of the public officers law. The members of the commission shall appoint a chair from among their number. Members shall not receive a salary or other compensation, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

2. The Republic airport commission shall assist in the development of a program relative to the administration and management of the Republic

airport and to advise the commissioner of transportation with regard to such other programs relative to the Republic airport as the commissioner may undertake. Such program shall include, but not be limited to identification of future capital needs, examining the means and methods of financing such future capital needs, the promotion and examination of the financing means and methods for the economic development of the area around the airport, the joining together of such economic development and the airport operations, the identification and implementation of ways of working with the local community to accomplish the program and the identification of non-aviation uses and purposes and prorations of use or purposes for determinations of in lieu of tax payments. Once the commission has been established, the commissioner and/or the department shall effectuate the authorizations, powers and/or duties set forth in section four hundred of this article only following the consultation, guidance, advice and assistance of the commission. The Republic airport commission shall meet at least six times a year at the call of the commissioner of transportation or the chair of the commission and shall keep a record of all its proceedings and recommendations. Staff services for the commission shall be performed by personnel of the department of transportation. In carrying out the functions and responsibilities of the commissioner and the commission, the commissioner shall designate an executive secretary from among the staff of the department of transportation who will act as the administrative agent of the commission and assist the commission in fulfilling its duties and functions.

3. The arrival or departure of aircraft to or from the airport between the hours of 11 p.m. and 7 a.m., except in the case of emergency, and the development of additional runways at the airport are hereby prohibited, provided, however, that such prohibitions may be altered, modified or changed by resolution adopted by a majority vote of the members of the commission after giving public notice of such alteration, modification or change and holding a public hearing thereon. Any alteration, modification or change which affects the prohibition with respect to arrival and departure of aircraft shall be made only after due consideration has been given to the period of daylight occurring at such airport. Notwithstanding the foregoing provisions of this

subdivision, the prohibition against the arrival or departure of aircraft to or from the airport between the hours of 11 p.m. and 7 a.m. shall not become effective until ninety days after the effective date of this subdivision. The commissioner upon the advice of the Republic airport commission shall promulgate regulations establishing permissible levels of noise for aircraft operating at the airport. The operator of any aircraft to or from the airport which exceeds such permissible levels of noise shall be guilty of a violation punishable by a fine not to exceed twenty-five hundred dollars.

* NB There are 2 § 402's

ARTICLE 16

DANIEL BOGGS - MARVIN FRANKLIN NEW YORK CITY TRANSIT AUTHORITY TRACK SAFETY TASK FORCE

*** § 403. Definitions.** For the purposes of this article:

1. "New York city transit authority" shall be deemed to include its subsidiary, the Manhattan and Bronx Surface Transit Operating Authority, and any other agency that may come under the control of the New York city transit authority.

2. "Daniel Boggs - Marvin Franklin New York city transit authority's on-track safety program" shall mean the program as described in section four hundred six of this article.

* NB There are 2 § 403's

*** § 404. Establishment of the Daniel Boggs - Marvin Franklin New York city transit authority track safety task force.** There is hereby established the Daniel Boggs - Marvin Franklin New York city transit track safety task force with responsibility for the review of the Daniel Boggs - Marvin Franklin New York city transit authority's on-track safety program, including the following:

1. training and qualifications of affected employees;

2. appropriate procedures for protecting New York city transit authority employees engaged in work along the track right-of-way, including good faith challenge procedures;

3. instructions to train operators;

4. relevant New York city transit authority rules;

5. third rail safety;

6. illumination; and

7. any additional related safety matters.

* NB There are 2 § 404's

*** § 405. Daniel Boggs - Marvin Franklin New York city transit authority track safety task force membership.** 1. The Daniel Boggs - Marvin Franklin New York city transit authority track safety task force shall consist of a total of four members as follows:

(a) the commissioner or his or her designee;

(b) the commissioner of labor or his or her designee;

(c) the president of New York city transit authority or his or her designee; and

(d) the president of Transport Workers Union, Local 100, an affiliate of the New York state AFL-CIO, or his or her designee.

2. The commissioner or his or her designee shall be the chair of the track safety task force.

3. The track safety task force shall meet as often as deemed necessary by the chair but in no event less than four times per year. Any member may call a meeting on not less than ten days written notice to the other members.

4. The members of the track safety task force shall receive no salary or other compensation for their services but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties.

* NB There are 2 § 405's

*** § 406. Daniel Boggs - Marvin Franklin New York transit authority's on-track safety program.** 1. By May first, two thousand eight, the Daniel Boggs - Marvin Franklin New York city transit authority track safety task force shall issue one or more reports setting forth the recommendations of its members with respect to the Daniel Boggs - Marvin Franklin New York city transit authority on-track safety program. Such reports shall be sent to the governor, the temporary president of the senate and the speaker of the assembly.

2. Such track safety task force shall also provide to the public employee safety and health bureau within the department of labor and to all labor organizations that represent New York city transit authority employees engaged in work on or adjacent to the right-of-way a copy of its reports.

3. Prior to implementation of any material modification to the Daniel Boggs - Marvin Franklin New York city transit authority's on-track safety program, the New York city transit authority shall advise the task force established in section four hundred four of this article which shall review such modification at its next meeting; except that nothing contained in this section shall be deemed to preclude or limit

the right of the New York city transit authority to implement any such modification which it deems appropriate to enhance the safety of its employees, customers or third parties.

* NB There are 2 § 406's

*** § 407. Annual inspection.** The commissioner shall conduct an annual inspection of the compliance by the New York city transit authority with its internal track safety program and, on or before July first, two thousand eight and each year thereafter, shall issue to the New York city transit authority a report detailing its findings. Within ninety days of its receipt of such report, the New York city transit authority shall advise the commissioner in writing of its actions, if any, implemented or to be implemented in response to such report.

* NB There are 2 § 407's

*** § 408. Preservation of rights.** The provisions of this article shall not modify or impair rights of any party under any law including, but not limited to, the provisions of article fourteen of the civil service law.

* NB There are 2 § 408's

ARTICLE 17

IMPLEMENTATION OF THE REBUILD NEW YORK THROUGH TRANSPORTATION INFRASTRUCTURE RENEWAL BOND ACT OF 1983

§ 420. Expenditure of moneys. The moneys received by the state from the sale of bonds and/or notes pursuant to the Rebuild New York Through Transportation Infrastructure Renewal Bond Act of 1983 shall be expended pursuant to annual appropriations for transportation infrastructure renewal projects as defined in this article.

§ 421. Definitions. As used in this article, the following terms shall include and mean:

1. "Transportation infrastructure renewal project". The construction, reconstruction, improvement, reconditioning, and preservation, including the acquisition of real property and interests therein required or expected to be required in connection therewith, of:

a. state highways and bridges, state parkways and bridges, highways and bridges not on the state highway system, including the improvement and/or elimination of highway-railroad grade crossings, and commuter rail parking facilities;

b. ports, marine terminals, canals and waterways; and

c. rail rapid transit, commuter rail, omnibus systems and facilities, rail passenger facilities, rail freight facilities, and airport and aviation capital facilities.

2. "Municipality". A city or a county not wholly contained within a city, a town, village, public benefit corporation or other public corporation, or two or more of the foregoing acting jointly.

3. "Commissioner". The commissioner of transportation of the state of New York.

4. "Department". The department of transportation of the state of New

York.

5. "Municipal transportation infrastructure renewal project". A transportation infrastructure renewal project undertaken by a municipality with funds provided in whole or in part by the Rebuild New York Through Transportation Infrastructure Renewal Bond Act of 1983 pursuant to an agreement between such municipality and the commissioner.

6. "Federal assistance". Funds available, other than by loan, from the federal government to a municipality, either directly or through allocation by the state, for any municipal transportation infrastructure renewal project.

7. "Municipal project cost". The actual cost of a municipal transportation infrastructure renewal project or the estimated reasonable cost thereof as determined by the commissioner, whichever is less, plus any direct incidental costs of such project approved by the state comptroller, and less any federal assistance received or to be received by the state for such project.

8. "New York state content program". Actions taken by the commissioner in concert with the commissioner of commerce, a municipality, or a contractor to encourage the participation of suppliers and contractors located within New York state, to the extent permissible under applicable federal regulations.

§ 422. Powers and duties of the commissioner. The commissioner is hereby authorized:

1. To provide for the accomplishment of any authorized transportation infrastructure renewal project unless otherwise provided for in law.

2. To provide for the accomplishment of any authorized municipal transportation infrastructure renewal project unless otherwise provided for in law, within the limitations of appropriations available therefor, pursuant to contract between the commissioner and the municipality

undertaking such project.

3. To utilize federal moneys available or which may become available to the state, or to a municipality in the form of federal assistance, for the purposes of effectuating the provisions of this article.

4. To enter into contracts with any person, firm, corporation or agency, private or governmental, for the purpose of effectuating the provisions of this article.

5. To prescribe such rules and regulations as he may deem appropriate to effectuate the provisions of this article, including but not limited to rules and regulations governing the form, content and submission of applications by municipalities for state financial assistance for municipal transportation infrastructure renewal projects.

6. To approve vouchers for the payment of state financial assistance to persons, firms, corporations or agencies, private and governmental, and municipalities pursuant to contracts for the accomplishment of municipal transportation infrastructure renewal projects.

7. To establish or cause to be established by the department of commerce a New York state content program which shall provide for notification to New York contractors, subcontractors and suppliers of opportunities to bid on contracts for projects financed under this article, and to promulgate procedures which will assure the compliance of such notification prior to awarding bids, and to require that contractors submit, as supplementary materials to their bids, documented evidence of their efforts to encourage the participation of New York suppliers and subcontractors on transportation infrastructure renewal projects financed pursuant to this article.

8. To perform such other and additional acts as he deems necessary or desirable to effectively carry out the provisions of this article.

§ 423. Powers and duties of municipalities. A municipality is hereby authorized to:

1. Undertake and carry out any municipal transportation infrastructure renewal project for which state assistance is received or is to be received pursuant to this article.

2. To expend money received from the state together with other moneys available to it for costs incurred for any such project.

3. To contract with any person, firm, corporation or agency, either governmental or private, for the purpose of accomplishing the purposes of this article.

4. To apply for and receive moneys of the state and the federal government for the purposes of accomplishing projects undertaken or to be undertaken pursuant to this article.

5. To perform such other and further acts as may be necessary, proper or desirable in order to carry out municipal transportation infrastructure renewal projects or any obligation, duty or function relating thereto.

§ 424. Approval of projects. When the funds for municipal transportation infrastructure renewal projects are appropriated to the department, such projects shall be undertaken only pursuant to contract with the commissioner entered into following submission to and approval by the commissioner of a municipal project application therefor.

§ 425. Contracts for municipal transportation infrastructure renewal projects. Any such contract between the commissioner and a municipality may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following:

a. an estimate of the reasonable cost of the project as determined by the commissioner;

b. an agreement by the commissioner to pay to the municipality during the progress of construction or following completion of construction as may be agreed upon by the parties, an amount, not to exceed the total cost of the project or such lesser amount as may have been established pursuant to section four hundred twenty-four of this article;

c. an agreement by the municipality:

(i) to proceed expeditiously with and complete the project as approved by the commissioner,

(ii) to apply for and/or make reasonable efforts to secure federal assistance, if any, for the project,

(iii) to secure the approval of the commissioner before applying for such federal assistance, in order to maximize the amounts of such assistance received or to be received for all projects in New York state,

(iv) to provide for the municipality's share of the cost of the project when such municipality's share is required by the appropriation therefor,

(v) to maintain the project at its own expense in accordance with the requirements of the commissioner for the period of time corresponding to the period of useful life for such project as determined by reference to section sixty-one of the state finance law; and

d. a provision that, in the event that federal assistance which was not included in the calculation of the state payment becomes available to the municipality, the amount of the state payment shall be recalculated with the inclusion of such federal assistance and the municipality shall pay to the state the amount by which the state payment actually made exceeds the state payment determined by the recalculation.

§ 426. Maintenance of records. In connection with each contract, the commissioner and the municipality shall keep adequate records of the amount of the payment by the state, the amount of federal assistance, if any, received by the municipality for the project, and of all moneys expended by the municipality for such project. Such records shall be kept by the commissioner and shall establish the basis for recalculations of the state payment as required herein. The commissioner shall have authority to carry out, or to cause to be carried out, audits of such contracts and records pursuant to rules and regulations promulgated by the commissioner.

§ 427. Equal employment opportunity program. 1. All contracts for design, construction, services and materials for transportation infrastructure renewal projects of whatever nature and all documents soliciting bids or proposals therefor shall contain or make reference to the following provisions:

a. The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group persons and women are afforded equal opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training.

b. At the request of the department, the contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the contract with the agency to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will cooperate in the implementation of the contractor's obligations hereunder.

c. The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor in the performance of the contract with the agency, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

d. The contractor will include the provisions of paragraphs a through c of this subdivision in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with the contract with the agency.

2. The governor shall establish procedures and guidelines to ensure that contractors and subcontractors undertake programs of affirmative action and equal employment opportunity as required by this section. Such procedures may require after notice in a bid solicitation, the submission of an affirmative action program prior to the award of any contract, or at any time thereafter, and may require the submission of compliance reports relating to the operation and implementation of any affirmative action program adopted hereunder. The governor may take appropriate action to effectuate the provisions of this section and shall be responsible for monitoring compliance with this article.

§ 428. Minority and women-owned business enterprise program. 1. Federal assistance projects. Where a transportation infrastructure renewal project or municipal transportation infrastructure project involving federal assistance is undertaken to effectuate the provisions of this article, applicable federal laws relative to participation of minority and women-owned business enterprises shall apply.

2. Other transportation infrastructure renewal projects. a. In the performance of transportation infrastructure renewal projects, minority and women-owned business enterprises shall be given the opportunity for meaningful participation. The governor shall establish measures and procedures to secure meaningful participation and identify those contracts and items of work for which minority and women-owned business enterprises may best bid to actively and affirmatively promote and assist their participation in the department's construction and

procurement program for transportation infrastructure renewal projects, so as to facilitate the award of a fair share of contracts to such enterprises; provided, however, that nothing in this article shall be construed to limit the ability of the governor to assure that qualified minority and women-owned business enterprises may participate in the transportation infrastructure renewal program. For purposes hereof, minority business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by citizens or permanent resident noncitizens who are Black, Hispanic, Asian or American Indian, and such ownership interest is real, substantial and continuing; and women-owned business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by citizens or permanent resident noncitizens who are women, and such ownership interest is real, substantial and continuing.

The provisions of this paragraph shall not be construed to limit the ability of any minority business enterprise to bid on any contract.

b. In the implementation of this section, the department shall consider compliance by any contractor with the requirements of any federal, state, or local law concerning minority and women-owned business enterprises, which may effectuate the requirements of this section. If the department determines that by virtue of the imposition of the requirements of any such law, in respect to capital project contracts, the provisions thereof duplicate or conflict with such law, the department may waive the applicability of this section to the extent of such duplication or conflict.

c. Nothing in this section shall be deemed to require that overall state and federal requirements for participation of minority and women-owned business enterprises in programs authorized under this article be applied without regard to local circumstances to all projects or in all communities.

3. In order to implement the requirements and objectives of this section, the governor shall establish procedures to monitor the contractors' compliance with provisions hereof, provide assistance in obtaining competing qualified minority and women-owned business enterprises to perform contracts proposed to be awarded, and take other appropriate measures to improve the access of minority and women-owned business enterprises to these contracts.

ARTICLE 18

SERVICE ENHANCEMENT PROGRAM

§ 430. Legislative intent. The continuation and improvement of the appropriate level of rail freight and passenger service and the maintenance and improvement of the railroad infrastructure enhances the economic vitality of local communities and the state. The legislature, upon the recommendation of the railroad taxation and service advisory council, has:

1. provided for temporary alterations in railroad real property taxation designed to encourage the continuation and improvement of railroad service and the maintenance and improvement of rail infrastructure;

2. provided for the establishment of a service enhancement program to assure the continuation and improvement of the appropriate level of rail freight and passenger service and the maintenance and improvement of the railroad infrastructure; and

3. provided for a process to evaluate information to review and assess the efficacy of the temporary property tax alterations designed to

foster the goals of the service enhancement program. The legislature recognizes that the railroad taxation and service advisory council may make recommendations concerning the continuation of the service enhancement program based upon its findings.

§ 431. Program objectives. The objectives of the service enhancement program, are:

1. the continuation of essential rail freight and passenger service;

2. the preservation and improvement of railroad infrastructure; and

3. the improvement of the quality and quantity of railroad freight and passenger service.

§ 432. Railroad participation in the program. The level of railroad participation in the program for the period nineteen hundred eighty-seven through nineteen hundred ninety-one shall depend on the estimated tax abatement as computed by the commissioner of taxation and finance pursuant to either subdivision (c) of section four hundred eighty-nine-j or subdivision (c) of section four hundred eighty-nine-hh of the real property tax law. The nature of railroad participation in the program, as set forth below, shall be based on the railroad's economic or exemption factor under title two-A and title two-B of article four of the real property tax law, as applicable, and the railroad's size classification as determined by the United States department of transportation, based on railroad system gross revenues. Regardless of the level of their participation, all railroads shall annually certify to the commissioner that to the best of their knowledge and belief such railroads are in substantial compliance with the terms and conditions of any contracts they may have with the department.

1. Class I railroads with economic factors greater than fifteen percent and other railroads with exemption factors less than eighty-five percent shall undertake capital improvement projects which augment the

railroad's normal capital program.

2. Class I railroads with economic factors equal to fifteen percent shall expand their maintenance-of-way programs over and above the level the railroad would have otherwise undertaken.

3. Other railroads with exemption factors equal to eighty-five percent shall apply their additional tax abatement toward the continuation of service, in a manner determined by railroad management.

4. Class I railroads over whose facilities intercity rail passenger service is operated shall include projects which will benefit such service and shall demonstrate a willingness to cooperate in achieving public and private improvement initiatives.

5. Further, all railroads participating in the program are encouraged to select projects which complement or build upon railroad projects supported with public funds.

§ 433. Service enhancement plans. 1. Every railroad seeking to participate in the program shall annually by the first of February submit a list of potential service enhancement program elements to the department. The department shall review these program elements for consistency with the legislative intent and program objectives stated in sections four hundred thirty and four hundred thirty-one of this article and shall provide its comments to each railroad by the first of March of each year.

2. (a) Every railroad seeking to participate in the program shall annually by the first of April of each year submit to the department a plan which shall:

(i) describe the nature of the railroad's intended service enhancement for the current calendar year as appropriate to railroad size and railroad ceiling exemption or economic factor;

(ii) describe the level of tax abatement as computed by the commissioner of taxation and finance pursuant to either subdivision (c) of section four hundred eighty-nine-j or subdivision (c) of section four hundred eighty-nine-hh of the real property tax law;

(iii) present the railroad's statement of goals, where possible;

(iv) provide detail on the railroad's proposed service enhancement plan;

(v) present a general outline of multiple year projects to be undertaken during the term of the program, as appropriate; and

(vi) note any proposed changes to the previous year's plan.

(b) Other railroads with exemption factors equal to eighty-five percent may state to what general purposes they intend to apply the additional tax abatement in lieu of the provisions of subdivision three of this section.

3. The filing of such plan, containing such information as may be required, shall constitute participation in the service enhancement program.

4. Immediately upon receipt of such plan, the department shall certify to the commissioner of taxation and finance participation in the service enhancement program by the railroad submitting such plan.

§ 434. Reports. Railroads are to file one copy of their current plan annually with the department not later than a date determined according to the commissioner of taxation and finance schedule for producing railroad ceiling values. The department shall review and comment on these plans and shall report annually on the service enhancement program on a date determined by it according to the commissioner of taxation and finance schedule for producing railroad ceiling values. The report shall be sent to the governor, the state and local railroad taxation and service advisory council, the majority and minority leaders of the senate and the speaker and minority leader of the assembly. It shall include the department's views on the consistency of the railroad plans with the objectives of the program as specified in section four hundred thirty-one of this article and with the content of the plans as specified in section four hundred thirty-three of this article.

ARTICLE 19

NEW YORK STATE TRANSPORTATION ENERGY CONSERVATION PROGRAM

Section 440. New York state transportation energy conservation program.

§ 440. New York state transportation energy conservation program. 1. As used in this article, unless a different meaning clearly appears from the context, the term:

(a) "Applicant" shall mean any town, city, village, county and for any project on the state highway/bridge system, the designated transportation coordinating committee, if one exists, or the metropolitan transportation planning organization, if no designated transportation coordinating committee exists. In cases where no metropolitan planning organization exists, the department may submit applications for projects on the state highway/bridge system.

(b) "Transportation energy conservation project" shall mean an improvement to or directly related to the use of a street, highway and/or bridge either on or off the state highway system provided such highway or bridge is not owned by a state authority. Such projects shall be designed to advance energy efficiency and conservation through improvements, including, but not limited to, capacity/spot improvements, signing, signalization and technical innovation, and training and technical assistance.

(c) "Program" shall mean the New York state transportation energy conservation program.

2. (a) The department shall promulgate rules and regulations to provide for the timely and effective implementation of the program.

(b) Such rules and regulations shall provide for application procedures, criteria for ranking and soliciting projects and standards to be used by the department in approving projects for funding.

(c) In promulgating such rules and regulations the department shall ensure that:

(i) the total costs of implementing any project approved for funding under the transportation energy conservation program will be returned in savings in energy costs attributable to the project within a period of not more than fifteen years, or the life of the project, whichever is less;

(ii) any moneys used for projects from the transportation energy conservation program are in addition to any existing funding from either state or local sources and such sources shall not be reduced due to the availability of moneys from such program;

(iii) no project shall receive in excess of two hundred fifty thousand dollars from the transportation energy conservation program;

(iv) an equitable distribution of moneys from the program is made statewide; and

(v) a report is issued, at least annually, detailing the commitment and use of such funds.

ARTICLE 20

IMPLEMENTATION OF THE ACCELERATED CAPACITY AND TRANSPORTATION IMPROVEMENTS OF THE NINETIES BOND ACT

§ 450. Expenditure of moneys. 1. The moneys received by the state from the sale of bonds and/or notes pursuant to the Accelerated Capacity and Transportation Improvements of the Nineties Bond Act shall be expended pursuant to annual appropriations for accelerated capacity and transportation improvements and municipal bridge improvements as defined in this article.

2. Regional distribution. (a) Notwithstanding any inconsistent

provisions of any general or special law, the aggregate value of improvements shall be distributed within the regions of the state in the following amounts:

(i) for the Hudson Valley region, consisting of Westchester, Rockland, Putnam, Dutchess, Columbia, Orange and Ulster counties: four hundred twenty-one million dollars ($421,000,000);

(ii) for the Long Island region, consisting of Nassau and Suffolk counties: six hundred ninety million dollars ($690,000,000);

(iii) for New York city, consisting of Richmond, Kings, Queens, New York and Bronx counties: six hundred ninety million dollars ($690,000,000); and

(iv) for the upstate region, consisting of all counties of New York state not included in subparagraphs (i), (ii), and (iii) of this paragraph: one billion, one hundred ninety-nine million dollars ($1,199,000,000).

(b) Disbursements for such improvements are to be financed from the sale of bonds pursuant to the Accelerated Capacity and Transportation Improvements of the Nineties Bond Act.

3. Program distribution. The moneys received by the state from the sale of bonds sold pursuant to the Accelerated Capacity and Transportation Improvements of the Nineties Bond Act shall be expended pursuant to annual appropriations for the following purposes:

(a) for reconstruction, replacement, reconditioning and preservation of state highways and parkways, and bridges thereon, for the purpose of restoring such facilities to their intended functions; provided, however, that in Nassau and Suffolk counties such reconstruction, replacement, reconditioning and preservation of state highways and parkways, and bridges thereon, shall be targeted to high capacity roadways to improve traffic flow and reduce congestion: one billion, nine hundred twelve million dollars ($1,912,000,000);

(b) for construction, reconstruction and improvement of the state's highways and parkways, and bridges thereon, for the purposes of addressing current and projected severe capacity problems as identified by the commissioner: eight hundred thirty-one million dollars ($831,000,000); and

(c) for construction, reconstruction, replacement, preservation, enhancement, restoration and improvement of selected municipal bridges not on the state highway system: two hundred fifty-seven million dollars ($257,000,000).

§ 451. Definitions. As used in this article, the following terms shall include and mean:

1. "Accelerated capacity and transportation improvements". The construction, reconstruction, capacity improvement, replacement, reconditioning and preservation, including the acquisition of real property and interests therein required or expected to be required in connection therewith, of state highways and parkways, and bridges thereon.

2. "Municipality". A city or a county not wholly contained within a city, a town, village or two or more of the foregoing acting jointly.

3. "Commissioner". The commissioner of transportation of the state of New York.

4. "Department". The department of transportation of the state of New York.

5. "Municipal bridge improvements". The construction, reconstruction, replacement, preservation, enhancement, restoration and improvement, including the acquisition of real property and interests therein required or expected to be required in connection therewith, of bridges not on the state highway system undertaken by a municipality with funds provided in whole or in part by the Accelerated Capacity and Transportation Improvements of the Nineties Bond Act pursuant to a contract between such municipality and the commissioner.

6. "Federal assistance". Funds available, other than by loan, from the federal government to a municipality, either directly or through allocation by the state, for any municipal accelerated capacity and transportation improvements.

7. "Municipal bridge improvements cost". The actual cost of municipal bridge improvements or the estimated reasonable cost thereof as determined by the commissioner, whichever is less, plus any direct incidental costs of such improvements approved by the state comptroller, and less any federal assistance received or to be received by the state for such improvements.

8. "New York state content program". Actions taken by the commissioner in concert with the commissioner of economic development, a municipality or a contractor to encourage the participation of suppliers and contractors located within New York state, to the extent permissible under applicable federal regulations.

9. "Bond proceeds". Moneys received by the state from the sale of bonds and/or notes sold pursuant to the Accelerated Capacity and Transportation Improvements of the Nineties Bond Act.

§ 452. Powers and duties of the commissioner. The commissioner is hereby authorized:

1. To provide for the accomplishment of authorized accelerated capacity and transportation improvements unless otherwise provided for in law.

2. To provide for the accomplishment of any authorized municipal bridge improvements unless otherwise provided for in law, within the limitations of appropriations available therefor, pursuant to contract between the commissioner and the municipality undertaking such improvements.

3. To utilize federal moneys available or which may become available to the state, or to a municipality in the form of federal assistance, for the purpose of effectuating the provisions of this article.

4. To enter into contracts with any person, firm, corporation or

agency, private or governmental, for the purpose of effectuating the provisions of this article.

5. To prescribe such rules and regulations as he may deem appropriate to effectuate the provisions of this article, including but not limited to rules and regulations governing the form, content and submission of applications by municipalities for use of bond proceeds for municipal bridge improvements.

6. To approve vouchers for the payment of state financial assistance to persons, firms, corporations or agencies, private and governmental, and municipalities pursuant to contracts for the accomplishment of municipal bridge improvements.

7. To establish or cause to be established by the department of economic development a New York state content program which shall provide for notification to New York contractors, subcontractors and suppliers of opportunities to bid on contracts for improvements financed under this article, and to promulgate procedures which will assure the compliance of such notification prior to awarding bids, and to require that contractors submit, as supplementary materials to their bids, documented evidence of their efforts to encourage the participation of New York suppliers and subcontractors on accelerated capacity and transportation improvements and municipal bridge improvements financed pursuant to this article.

8. To perform such other and additional acts as he deems necessary or desirable to carry out effectively the provisions of this article.

§ 453. Powers and duties of municipalities. A municipality is hereby authorized:

1. To undertake and carry out municipal bridge improvements for which state assistance is received or is to be received pursuant to this article.

2. To expend moneys received from the state together with other moneys available to it for costs incurred for such improvements.

3. To contract with any person, firm, corporation or agency, either governmental or private, for the purpose of accomplishing the purposes of this article.

4. To apply for and receive moneys of the state and the federal government for the purposes of accomplishing municipal bridge improvements.

5. To perform such other and further acts as may be necessary, proper or desirable in order to carry out municipal bridge improvements or any obligation, duty or function relating thereto.

§ 454. Approval of municipal bridge improvements. When the funds for municipal bridge improvements are appropriated to the department, such improvements shall be undertaken only pursuant to contract with the commissioner entered into following submission to and approval by the commissioner of a municipal bridge improvements application therefor.

§ 455. Contracts for municipal bridge improvements. Any such contract between the commissioner and a municipality may include such provisions as may be agreed upon by the parties thereto and shall include, in substance, the following:

1. the municipal bridge improvements cost;

2. an agreement by the commissioner to pay to the municipality during the progress of construction or following completion of construction, as may be agreed upon by the parties, an amount equal to eighty percent of the cost of the bridge improvements;

3. an agreement by the municipality:
(a) to proceed expeditiously with and complete the bridge improvements

as approved by the commissioner;

(b) to apply for and/or make reasonable efforts to secure federal assistance, if any, for the bridge improvements;

(c) to secure the approval of the commissioner before applying for such federal assistance, in order to maximize the amounts of such assistance received or to be received for all improvements in New York state;

(d) to maintain the municipal bridge improvements at its own expense in accordance with the requirements of the commissioner for the period of time corresponding to the period of useful life for such improvements as determined by reference to section sixty-one of the state finance law;

(e) to certify to the commissioner that the amount of funds historically appropriated for highway and bridge capital purposes by that municipality shall not be reduced because of the availability of the proceeds of the sale of bonds authorized in the Accelerated Capacity and Transportation Improvements of the Nineties Bond Act; and

(f) to pay twenty percent of the cost of the municipal bridge improvements; provided, however, that a municipality may be exempted from payment of such share when such share does not exceed one thousand dollars. Municipalities shall be authorized to enter into specific municipal bridge improvements contracts with the commissioner to advance any phase or phases of the municipal bridge improvements with their resources. The unreimbursed municipal costs attendant to the use of such resources may be credited as all or a portion of the municipality's twenty percent share of such municipal bridge improvements, as approved by the commissioner.

§ 456. Maintenance of records. In connection with each contract, the commissioner and the municipality shall keep adequate records of the amount of the payment by the state, the amount of federal assistance, if any, received by the municipality for the municipal bridge improvements and of all moneys expended by the municipality for such improvements. Such records shall be kept by the commissioner and shall establish the basis for recalculations of the state payment as required herein. The commissioner shall have authority to carry out, or to cause to be carried out, audits of such contracts and records pursuant to rules and regulations promulgated by the commissioner.

§ 457. Regional distribution of petroleum business tax obligations from the dedicated highway and bridge trust fund. For the period April first, nineteen hundred ninety-three through March thirty-first, nineteen hundred ninety-seven, the amount of three billion nine hundred seventy-five million dollars in projected obligations from the dedicated highway and bridge trust fund related to deposits made in accordance with section three hundred one-j of the tax law shall be utilized within the regions of the state in accordance with the following allocations:

(i) Hudson Valley Region, consisting of the counties of Westchester, Rockland, Putnam, Dutchess, Columbia, Orange and Ulster Counties; fourteen percent or up to five hundred fifty-six million five hundred thousand dollars ($556,500,000);

(ii) Long Island Region, consisting of Nassau and Suffolk Counties; twenty-three percent or up to nine hundred fourteen million two hundred fifty thousand dollars ($914,250,000);

(iii) New York City Region, consisting of Richmond, Kings, Queens, New York and Bronx Counties; twenty-three percent or up to nine hundred fourteen million two hundred fifty thousand dollars ($914,250,000);

(iv) Upstate region, consisting of all counties of New York state not included in subparagraphs (i), (ii), and (iii); forty percent or up to one billion five hundred ninety million dollars; ($1,590,000,000).

In addition, it is the intent of the governor of the state of New York, the temporary president of the senate and the speaker of the assembly, on or before June fifteenth, nineteen hundred ninety-three, to enter into a memorandum of understanding with respect to the implementation of state and local highway projects to be supported by dedicated funding pursuant to this chapter. The minority leaders of the senate and assembly may also enter into such memorandum of understanding. This memorandum of understanding will be based upon the dedicated funding provided under the dedicated highway and bridge trust fund, less required state matches to federal funds.

* ARTICLE 21

IMPLEMENTATION OF THE TRANSPORTATION INFRASTRUCTURE BOND ACT OF 2000

* NB Not effective due to defeat of the Transportation Bond Act of 2000

*** § 470. Expenditure of moneys.** 1. In accordance with the provisions of the Transportation Infrastructure Bond Act of 2000 authorizing the creation of general obligation debt in the amount of three billion eight hundred million dollars ($3,800,000,000), the moneys received by the state from the sale of bonds and/or notes shall be expended for uses eligible pursuant to the Transportation Infrastructure Bond Act of 2000 pursuant to annual appropriations as follows:

(a) One billion nine hundred million dollars ($1,900,000,000) as authorized by paragraph (a) of subdivision two of this section;

(b) Three hundred million dollars ($300,000,000) as authorized by paragraph (b) of subdivision two of this section; and

(c) One billion six hundred million dollars ($1,600,000,000) as authorized by subdivision two of section twelve hundred seventy-e of the public authorities law.

2. Program distribution. The moneys received by the state from the sale of bonds sold pursuant to the Transportation Infrastructure Bond Act of 2000 for uses eligible pursuant to subdivisions a and b of section four of the Transportation Infrastructure Bond Act of 2000 shall be expended for the following transportation programs, pursuant to

annual appropriations:

(a) One billion nine hundred million dollars ($1,900,000,000) for the construction, reconstruction, replacement, improvement, reconditioning, rehabilitation and preservation, including engineering, construction management, site preparation, clearances, the preparation of designs, plans, specifications, estimates, environmental impact statements, appraisals and surveys, and the acquisition of real property and interests therein required or expected to be required in connection therewith, of: state highways, bridges and parkways; highways and bridges off the state highway system necessary or reasonably expected to be necessary as a project component or incidental to projects otherwise authorized by this paragraph in relation to the canal system and appurtenances thereto; border crossing enhancements either on or off the state highway system; the improvement and/or elimination of highway-railroad grade crossings either on or off the state highway system; pedestrian and/or bicycle trails, pathways and bridges that serve transportation needs; the canal system and appurtenances thereto, including moveable bridges that cross over the canal system, canal infrastructure improvement and enhancement projects, and improvement and enhancement of canal harbors, service ports, marine terminals and marine transportation facilities on the canal system. Recognizing the importance of addressing the most urgently needed projects in a timely fashion, five hundred million dollars ($500,000,000) shall be allocated for uses described in this paragraph as related to projects involving the conversion of Route 17 to I-86, Route 219, and the canal system and its appurtenances.

(b) Three hundred million dollars ($300,000,000) for the construction, reconstruction, replacement, improvement, reconditioning, rehabilitation and preservation, including engineering, construction management, site preparation, clearances, the preparation of designs, plans, specifications, estimates, environmental impact statements, appraisals and surveys, and the acquisition of real property and interests therein required or expected to be required in connection therewith, of: highways and bridges either on or off the state highway system necessary or reasonably expected to be necessary as a project component or incidental to projects otherwise authorized by this paragraph involving airports and aviation facilities, ports, omnibus, mass transit, rapid transit and rail projects; airports and aviation facilities, equipment and related projects as part of the program which shall be known as the New York Statewide Opportunities for Airport Revitalization ("NY SOARs") program, exclusive of those airports and facilities under the jurisdiction of the port authority of New York and New Jersey or operated by the state of New York; ports, marine terminals and marine transportation facilities exclusive of those under the jurisdiction of the port authority of New York and New Jersey or the canal corporation; omnibus, mass transit and rapid transit systems, facilities, and equipment, including acquisition, exclusive of those operated or acquired by or under the jurisdiction of the metropolitan transportation authority and its subsidiaries, the New York city transit authority and its subsidiaries and the Triborough bridge and tunnel authority; urban, commuter and intercity passenger rail, freight rail, and intermodal passenger and freight facilities and equipment, including alterations necessary to improve track clearances, and also including facilities used jointly by commuter railroad companies and freight railroad companies, but otherwise exclusive of those operated by or under the jurisdiction of the metropolitan transportation authority and its subsidiaries, the New York city transit authority and its subsidiaries and the Triborough bridge and tunnel authority.

* NB Not effective due to defeat of the Transportation Bond Act of 2000

*** § 471. Definitions.** As used in this article, the following terms shall have the following meanings:

1. "Transportation infrastructure project" shall mean a project undertaken with funds provided in whole or in part by the Transportation Infrastructure Bond Act of 2000, for those transportation programs set forth in paragraphs (a) and (b) of subdivision two of section four hundred seventy of this article.

2. "Municipality" shall mean a city; a county not wholly contained within a city; a town; a village; a public benefit corporation or other public authority or corporation, or two or more of the foregoing acting

jointly. Provided, however, that "municipality" shall not include the port authority of New York and New Jersey.

3. "Commissioner" shall mean the commissioner of transportation of the state of New York.

4. "Department" shall mean the department of transportation of the state of New York.

5. "Municipal transportation infrastructure project" shall mean a transportation infrastructure project undertaken by a municipality with funds provided in whole or in part by the Transportation Infrastructure Bond Act of 2000, for those transportation programs set forth in paragraph (a) or (b) of subdivision two of section four hundred seventy of this article, pursuant to an agreement between such municipality and the commissioner.

6. "Federal assistance" shall mean funds available from the federal government for any municipal transportation infrastructure project.

7. "Municipal project cost" shall mean the actual cost of a municipal transportation infrastructure project or the estimated reasonable cost thereof as determined by the commissioner, whichever is less, and less any federal assistance received or to be received for such project.

8. "Bond proceeds" shall mean moneys received by the state from the sale of bonds and/or notes sold pursuant to the Transportation Infrastructure Bond Act of 2000 for uses set forth in subdivisions a and b of section four of the Transportation Infrastructure Bond Act of 2000.

9. "Canal corporation" shall mean the New York state canal corporation created pursuant to section three hundred eighty-two of the public authorities law.

10. "Canal system" shall mean the "New York state canal system", as such term is defined by subdivision ten of section three hundred fifty-one of the public authorities law.

11. "Metropolitan transportation authority" shall mean the corporation created by section twelve hundred sixty-three of the public authorities law.

12. "New York city transit authority" shall mean the corporation created by section twelve hundred one of the public authorities law.

13. "Triborough bridge and tunnel authority" shall mean the corporation created by section five hundred fifty-two of the public authorities law.

14. "Port Authority of New York and New Jersey" shall mean that body corporate and politic created pursuant to article three of chapter one hundred fifty-four of the laws of nineteen hundred twenty-one, and designated as "The Port Authority of New York and New Jersey" by such chapter.

* NB Not effective due to defeat of the Transportation Bond Act of 2000

*** § 472. Powers and duties of the commissioner.** In addition to other powers provided for in law, the commissioner is hereby authorized:

1. To provide for the accomplishment of any authorized transportation infrastructure project, and to provide for the accomplishment of any authorized municipal transportation infrastructure project, within the limitations of appropriations available therefor, pursuant to contract between the commissioner and the municipality undertaking such project.

2. To utilize federal moneys available or which may become available to the state, or to a municipality in the form of federal assistance for the purpose of effectuating the provisions of this article.

3. To enter into contracts with any person, firm, corporation, agency or other entity, private or governmental, for the purpose of effectuating the provisions of this article.

4. To promulgate such rules and regulations, and to develop such forms and procedures as he or she may deem appropriate to effectuate the provisions of this article, including but not limited to requirements for the form, content and submission of applications by municipalities for state financial assistance for municipal transportation infrastructure projects.

5. To approve vouchers for the payment of state financial assistance to persons, firms, corporations or agencies, private and governmental, and municipalities pursuant to contracts for the accomplishment of municipal transportation infrastructure projects.

6. To perform such other and additional acts as he or she deems necessary or desirable to effectively carry out the provisions of this article.

* NB Not effective due to defeat of the Transportation Bond Act of 2000

*** § 473. Powers and duties of municipalities.** A municipality is hereby authorized:

1. To undertake and carry out any municipal transportation infrastructure project for which state assistance is received or is to be received pursuant to this article.

2. To expend money received from the state together with other moneys available to it for costs incurred for any such project.

3. To contract with any person, firm, corporation or agency, either governmental or private, for the purpose of accomplishing the purposes of this article.

4. To apply for and receive moneys of the state, federal and local governments and other public or private sources for the purpose of accomplishing projects undertaken or to be undertaken pursuant to this

article.

5. To perform such other and further acts as may be necessary, proper or desirable in order to carry out municipal transportation infrastructure projects or any obligation, duty or function relating thereto.

* NB Not effective due to defeat of the Transportation Bond Act of 2000

*** § 474. Approval of projects.** When the funds for municipal transportation infrastructure projects are appropriated to the department, such projects shall be undertaken only pursuant to contract with the commissioner entered into following submission to and approval by the commissioner of a municipal transportation infrastructure project application therefor.

* NB Not effective due to defeat of the Transportation Bond Act of 2000

*** § 475. Contracts for municipal transportation infrastructure projects.** Any such contract between the commissioner and a municipality may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following:

1. an estimate of the reasonable cost of the project as determined by the commissioner;

2. an agreement by the commissioner to pay to the municipality during the progress of construction or following completion of construction an amount as may be agreed upon by the parties;

3. an agreement by the municipality:

(a) to proceed expeditiously with and complete the project as approved by the commissioner,

(b) to apply for and/or make reasonable efforts to secure federal assistance, if any, for the project,

(c) to provide for the municipality's share of the cost of the project, if any,

(d) to maintain the project at its own expense in accordance with the requirements of the commissioner for the period of time corresponding to the period of useful life for such project as determined by reference to section sixty-one of the state finance law; and

4. a provision that, in the event that federal assistance which was not included in the calculation of the state financial assistance becomes available to the municipality, the amount of the state financial assistance shall be recalculated by reducing the amount of the state financial assistance by the amount of such federal assistance, and the municipality shall pay to the state the amount by which the state payment actually made exceeds the state financial assistance determined by the recalculation, if any.

* NB Not effective due to defeat of the Transportation Bond Act of 2000

*** § 476. Maintenance of records.** In connection with each contract, the commissioner and the municipality shall keep adequate records of the amount of the payment by the state, the amount of federal assistance, if any, received by the municipality for the project, and of all moneys expended by the municipality for such project. Such records required to be kept by the commissioner shall establish the basis for recalculations of the state financial assistance as required herein. The commissioner shall have authority to carry out, or to cause to be carried out, audits of such contracts and records pursuant to rules and regulations promulgated by the commissioner.

* NB Not effective due to defeat of the Transportation Bond Act of 2000

*** § 477. Consistency with federal tax law.** All actions taken pursuant to this article shall be reviewed for consistency with provisions of the federal internal revenue code and regulations thereunder, in accordance with procedures established in connection with the issuance of any tax exempt bonds pursuant to this article, to preserve the tax exempt status of such bonds.

* NB Not effective due to defeat of the Transportation Bond Act of 2000

*** § 478. Compliance with other law.** Every recipient of funds to be made available pursuant to this article shall comply with all applicable state, federal and local laws.

* NB Not effective due to defeat of the Transportation Bond Act of 2000

ARTICLE 22

IMPLEMENTATION OF THE REBUILD AND RENEW NEW YORK TRANSPORTATION BOND ACT OF 2005

§ 480. Expenditure of moneys. 1. In accordance with the provisions of the rebuild and renew New York transportation bond act of two thousand five authorizing the creation of general obligation debt in the amount of two billion nine hundred million dollars ($2,900,000,000), the moneys received by the state from the sale of bonds and/or notes shall be expended for uses eligible pursuant to the rebuild and renew New York transportation bond act of two thousand five pursuant to annual appropriations as follows:

(a) One billion four hundred fifty million dollars ($1,450,000,000) as authorized by subdivision two of this section; and

(b) One billion four hundred fifty million dollars ($1,450,000,000) as authorized by subdivision two of section twelve hundred seventy-f of the public authorities law.

2. Program distribution. The moneys received by the state from the sale of bonds sold pursuant to the rebuild and renew New York transportation bond act of two thousand five for uses eligible pursuant to subdivision a of section four of the rebuild and renew New York transportation bond act of two thousand five shall be expended for the following transportation programs, pursuant to annual appropriations:

One billion four hundred fifty million dollars ($1,450,000,000) for the construction, reconstruction, replacement, improvement, reconditioning, rehabilitation and preservation, including engineering, construction management, site preparation, clearances, the preparation of designs, plans, specifications, estimates, environmental impact statements, appraisals and surveys, and the acquisition of real property and interests therein required or expected to be required in connection therewith, of: state highways, bridges and parkways; highways and bridges off the state highway system necessary or reasonably expected to be necessary as a project component or incidental to projects otherwise authorized by this paragraph in relation to the canal system and appurtenances thereto; highways and bridges either on or off the state highway system necessary or reasonably expected to be necessary as a project component or incidental to projects otherwise authorized by this paragraph in relation to airports and aviation facilities, ports, omnibus, mass transit, rapid transit and rail projects; border crossing enhancements either on or off the state highway system; the improvement and/or elimination of highway-railroad grade crossings either on or off the state highway system; pedestrian and/or bicycle trails, pathways and bridges that serve transportation needs; the canal system and appurtenances thereto, including moveable bridges that cross over the canal system, canal infrastructure improvement and enhancement projects, and improvement and enhancement of canal harbors, service ports, marine terminals and marine transportation facilities on the canal system;

airports and aviation facilities, equipment and related projects, exclusive of those airports and facilities under the jurisdiction of the port authority of New York and New Jersey or operated by the state of New York; ports, marine terminals and marine transportation facilities exclusive of those under the jurisdiction of the port authority of New York and New Jersey; omnibus, mass transit and rapid transit systems, facilities, and equipment, including acquisition, exclusive of those operated or acquired by or under the jurisdiction of the metropolitan transportation authority and its subsidiaries, the New York city transit authority and its subsidiaries and the Triborough bridge and tunnel authority; urban, commuter and intercity passenger rail, freight rail, and intermodal passenger and freight facilities and equipment, including alterations necessary to improve track clearances, and also including facilities used jointly by commuter railroad companies and freight railroad companies, but otherwise exclusive of those operated by or under the jurisdiction of the metropolitan transportation authority and its subsidiaries, the New York city transit authority and its subsidiaries and the Triborough bridge and tunnel authority.

§ 481. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Transportation infrastructure project" shall mean a project undertaken with funds provided in whole or in part by the rebuild and renew New York transportation bond act of two thousand five, for those transportation programs set forth in paragraph (a) of subdivision one of section four hundred eighty of this article.

2. "Municipality" shall mean a city; a county not wholly contained within a city; a town; a village; a public benefit corporation or other public authority or corporation, or two or more of the foregoing acting jointly. Provided, however, that "municipality" shall not include the port authority of New York and New Jersey.

3. "Commissioner" shall mean the commissioner of transportation of the state of New York.

4. "Department" shall mean the department of transportation of the state of New York.

5. "Federal assistance" shall mean funds available from the federal government for any municipal transportation infrastructure project.

6. "Municipal transportation infrastructure project" shall mean a transportation infrastructure project undertaken by a municipality with funds provided in whole or in part by the rebuild and renew New York transportation bond act of two thousand five, for those transportation programs set forth in subdivision two of section four hundred seventy of this article, pursuant to an agreement between such municipality and the commissioner.

7. "Municipal project cost" shall mean the actual cost of a municipal transportation infrastructure project or the estimated reasonable cost thereof as determined by the commissioner, whichever is less, and less any federal assistance received or to be received for such project.

8. "Bond proceeds" shall mean moneys received by the state from the sale of bonds and/or notes sold pursuant to the rebuild and renew New York transportation bond act of two thousand five for uses set forth in subdivision a of section four of the rebuild and renew New York transportation bond act of two thousand five.

9. "Canal corporation" shall mean the New York state canal corporation created as a subsidiary corporation of the New York state thruway authority pursuant to chapter seven hundred sixty-six of the laws of nineteen hundred ninety-two and continued and reconstituted as a subsidiary corporation of the power authority of the state of New York pursuant to subdivision one of section one thousand five-b of the public authorities law.

10. "Canal system" shall mean the "New York state canal system" shall mean all of the canals, canal lands, feeder canals, reservoirs, canal terminals, canal terminal lands and other property under the

jurisdiction of the canal corporation of the state of New York pursuant to article one-A of the canal law.

11. "Metropolitan transportation authority" shall mean the corporation created by section twelve hundred sixty-three of the public authorities law.

12. "New York city transit authority" shall mean the corporation created by section twelve hundred one of the public authorities law.

13. "Triborough bridge and tunnel authority" shall mean the corporation created by section five hundred fifty-two of the public authorities law.

14. "Port Authority of New York and New Jersey" shall mean that body corporate and politic created pursuant to article three of chapter one hundred fifty-four of the laws of nineteen hundred twenty-one, and designated as "The Port Authority of New York and New Jersey" by such chapter.

§ 482. Powers and duties of the commissioner. In addition to other powers provided for in law, the commissioner is hereby authorized:

1. To provide for the accomplishment of any authorized transportation infrastructure project, and to provide for the accomplishment of any authorized municipal transportation infrastructure project, within the limitations of appropriations available therefor, pursuant to contract between the commissioner and the municipality undertaking such project.

2. To utilize federal moneys available or which may become available to the state, or to a municipality in the form of federal assistance for the purpose of effectuating the provisions of this article.

3. To enter into contracts with any person, firm, corporation, agency or other entity, private or governmental, for the purpose of effectuating the provisions of this article.

4. To approve vouchers for the payment of state financial assistance to persons, firms, corporations or agencies, private and governmental, and municipalities pursuant to contracts for the accomplishment of municipal transportation infrastructure projects.

5. To promulgate such rules and regulations, and to develop such forms and procedures as he or she may deem appropriate to effectuate the provisions of this article, including but not limited to requirements for the form, content and submission of applications by municipalities for state financial assistance for municipal transportation infrastructure projects.

6. To perform such other and additional acts as he or she deems necessary or desirable to effectively carry out the provisions of this article.

§ 483. Powers and duties of municipalities. A municipality is hereby authorized:

1. To undertake and carry out any municipal transportation infrastructure project for which state assistance is received or is to be received pursuant to this article.

2. To expend money received from the state together with other moneys available to it for costs incurred for any such project.

3. To contract with any person, firm, corporation or agency, either governmental or private, for the purpose of accomplishing the purposes of this article.

4. To apply for and receive moneys of the state, federal and local governments and other public or private sources for the purpose of accomplishing projects undertaken or to be undertaken pursuant to this article.

5. To perform such other and further acts as may be necessary, proper or desirable in order to carry out municipal transportation infrastructure projects or any obligation, duty or function relating thereto.

§ 484. Approval of projects. When the funds for municipal transportation infrastructure projects are appropriated to the department, such projects shall be undertaken only pursuant to contract with the commissioner entered into following submission to and approval by the commissioner of a municipal transportation infrastructure project application therefor.

§ 485. Contracts for municipal transportation infrastructure projects. Any such contract between the commissioner and a municipality may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following:

1. an estimate of the reasonable cost of the project as determined by the commissioner;

2. an agreement by the commissioner to pay to the municipality during the progress of construction or following completion of construction an amount as may be agreed upon by the parties;

3. an agreement by the municipality:
(a) to proceed expeditiously with and complete the project as approved by the commissioner,
(b) to apply for and/or make reasonable efforts to secure federal assistance, if any, for the project,
(c) to provide for the municipality's share of the cost of the project, if any,
(d) to maintain the project at its own expense in accordance with the requirements of the commissioner for the period of time corresponding to the period of useful life for such project as determined by reference to section sixty-one of the state finance law; and

4. a provision that, in the event that federal assistance which was not included in the calculation of the state financial assistance becomes available to the municipality, the amount of the state financial assistance shall be recalculated by reducing the amount of the state financial assistance by the amount of such federal assistance, and the municipality shall pay to the state the amount by which the state payment actually made exceeds the state financial assistance determined by the recalculation, if any.

§ 486. Maintenance of records. In connection with each contract, the commissioner and the municipality shall keep adequate records of the amount of the payment by the state, the amount of federal assistance, if any, received by the municipality for the project, and of all moneys expended by the municipality for such project. Such records required to be kept by the commissioner shall establish the basis for recalculations of the state financial assistance as required herein. The commissioner shall have authority to carry out, or to cause to be carried out, audits of such contracts and records pursuant to rules and regulations promulgated by the commissioner.

§ 487. Consistency with federal tax law. All actions taken pursuant to this article shall be reviewed for consistency with provisions of the federal internal revenue code and regulations thereunder, in accordance with procedures established in connection with the issuance of any tax exempt bonds pursuant to this article, to preserve the tax exempt status of such bonds.

§ 488. Compliance with other law. Every recipient of funds to be made available pursuant to this article shall comply with all applicable state, federal and local laws.