

STATE OF NEW YORK

5445

2011-2012 Regular Sessions

IN SENATE

May 23, 2011

Introduced by Sens. FUSCHILLO, LIBOUS, DeFRANCISCO, DILAN, FLANAGAN, GOLDEN, HANNON, LARKIN, MAZIARZ, SMITH, ZELDIN -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the transportation law, the executive law and the public authorities law, in relation to authorizing innovative infrastructure development

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

1 Section 1. This act shall be known and may be cited as the "innova-
2 tive infrastructure development act".

3 § 2. The transportation law is amended by adding a new article 24 to
4 read as follows:

ARTICLE 24

INNOVATIVE INFRASTRUCTURE DEVELOPMENT

Section 500. Definitions.

8 501. Authority of the commissioner.

9 502. Transportation infrastructure projects.

10 503. Cost analysis.

11 504. Preparation of preliminary solicitations.

12 505. Preliminary acceptance of best value proposals.

13 506. General provisions.

14 507. Agreements.

15 508. Revenues.

16 509. Condemnation and operation in the event of a default.

17 510. Federal, state and local assistance.

18 511. Police powers; violations of law.

19 512. Powers and duties of the private entity.

20 513. Confidentiality.

21 514. Severability clause.

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

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1 § 500. Definitions. As used in this article, unless a different mean-
2 ing appears from the context, the following terms shall mean:

3 1. "Private entity" means any association, corporation, limited
4 liability company, partnership, firm, business trust, joint venture, not
5 for profit entity, fund or other private business entity.

6 2. "Public entity" means the state, the federal government, any other
7 state, any bi-state authority or commission, any multi-state authority
8 or commission, any multi-national authority or commission, any nation,
9 any province, or any agency, commission, public authority, public bene-
10 fit corporation, political subdivision or municipality thereof, or any
11 other governmental entity, or any combination of any of the foregoing.

12 3. "Transportation infrastructure" means (a) highways, railroads,
13 airports, transit facilities, buses, ferries, bridges, tunnels, tracks,
14 vehicles, ports, rolling stock, equipment, parking facilities, transit
15 stations, bus stations, intermodal centers, terminals, rest areas,
16 transportation management and information systems, intelligent transpor-
17 tation systems, land use control and development, fuel storage, energy
18 systems, security systems, seismic control systems, utility relocation,
19 and rights-of-way associated with each mode or facility and related
20 facilities and systems, and; (b) services for the movement of people,
21 vehicles, goods or information on, by or through the use of those items
22 set forth in paragraph (a) of this subdivision, and shall include
23 services provided pursuant to transportation infrastructure agreements.

24 5. "Transportation infrastructure agreement" shall mean any agreement
25 entered into by the commissioner pursuant to section five hundred one of
26 this article.

27 6. "Transportation infrastructure project" shall mean the planning,
28 acquisition, design, engineering, environmental analysis, construction,
29 reconstruction, restoration, rehabilitation, establishment, improvement,
30 renovation, extension, repair, management, operation, maintenance,
31 development and/or financing of transportation infrastructure.

32 7. "Board" shall mean the innovative infrastructure development board
33 as established by section nine hundred thirty of the executive law.

34 § 501. Authority of the commissioner. Notwithstanding the provisions
35 of any law to the contrary, the commissioner is authorized to enter into
36 transportation infrastructure agreements, on such terms and conditions
37 as the commissioner deems appropriate and subject to the approval of the
38 director of the budget and the board, and in accordance with section one
39 hundred twelve of the state finance law, with public and/or private
40 entities to provide for, or in support of, or associated with transpor-
41 tation infrastructure projects. In furtherance of such agreements, the
42 commissioner may:

43 1. accept, in accordance with the state finance law and the public
44 officers law, any appropriation, grant or offer of funds or property or
45 other forms of assistance for the purposes of this article from any
46 public and/or private entity and comply with the terms and conditions
47 thereof;

48 2. accept, pursuant to the terms of a transportation infrastructure
49 agreement entered into pursuant to this section, property or any inter-
50 ests therein and transportation infrastructure to be maintained as part
51 of the state's transportation system. Any such interest in transporta-
52 tion infrastructure so acquired shall be deemed to have been acquired by
53 the commissioner pursuant to section thirty of the highway law;

54 3. utilize any of the powers or authority of the commissioner to
55 achieve the purposes of this article;

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1 4. finance all or any part of the costs to the department or to any
2 public and/or private entity of any transportation infrastructure
3 project, including financing through or accompanied by one or more leas-
4 es or concessions of such project or any part thereof by or to such
5 entity or entities and/or by or to the department; and

6 5. utilize the commissioner's eminent domain powers pursuant to the
7 highway law and the eminent domain procedure law, on such terms and
8 conditions as the commissioner deems appropriate, to acquire property
9 required for transportation infrastructure projects that are the subject
10 of transportation infrastructure agreements with the commissioner pursu-
11 ant to this section.

12 § 502. Transportation infrastructure projects. 1. Transportation
13 infrastructure projects provided pursuant to a transportation infras-
14 tructure agreement shall not be subject to the provisions of any local
15 law, land use review requirements, real property tax or any other local
16 tax.

17 2. Whenever a transportation infrastructure project involves the
18 construction, reconstruction or improvement of a state highway, which is
19 now or which shall hereafter be designated in section three hundred
20 forty-one of the highway law, shall provide for the relocation of such
21 state highway or portion thereof on a location which deviates from the
22 location of the existing highway for a continuous length in excess of
23 one mile as measured along the center line of the existing highway, the
24 commissioner shall before filing the descriptions and the original trac-
25 ings of any maps or proceeding with the acquisition of property or the
26 work of construction, reconstruction or improvement, transmit such plans
27 to the board of supervisors of each county in which such relocation or
28 any portion thereof is situated. In case the relocation or any portion
29 thereof as proposed, is situated in a county other than the county in
30 which the existing highway or portion thereof is located, such plans
31 shall be transmitted to both of such counties and shall be subject to
32 review by each of such counties in the manner as hereinafter provided.
33 The board of supervisors, after the receipt of such plans, may conduct a
34 public hearing or hearings upon such notice as such board of supervisors
35 shall deem reasonable, but not less than ten days, to the commissioner
36 and to such other party or parties deemed by said board of supervisors
37 to be interested in the project. In any event, and within forty-five
38 days after receipt of the plans, the board of supervisors shall, by
39 resolution, duly adopted by a majority vote of its members, provide a
40 recommendation of approval, disapproval or modification in such plans as
41 the public interest shall require. Such resolution shall be forwarded to
42 the commissioner within five days of adoption. In case such relocation
43 is situated in two or more counties, such resolution must be separately
44 adopted by the board of supervisors of each county as to the relocation
45 situated therein. The form of the resolution shall be prescribed by the
46 commissioner. The commissioner shall in reviewing any transportation
47 infrastructure project proposal subject to this subdivision take any
48 resolution adopted pursuant to this subdivision into consideration. Upon
49 the failure or omission of any board of supervisors to act within the
50 time and manner herein required, the said plans shall be deemed to be
51 acceptable so far as such board of supervisors is concerned.

52 § 503. Cost analysis. Prior to any solicitation of proposals made
53 pursuant to section nine hundred thirty-one of the executive law, the
54 commissioner shall conduct a study and issue a report which shall detail
55 the risk adjusted estimated life of project cost for the proposed trans-

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1 portation infrastructure project were the department to undertake such
2 project through traditional means of procurement and financing.

3 § 504. Preparation of preliminary solicitations. Notwithstanding any
4 provision of law to the contrary, the commissioner is authorized to
5 prepare preliminary solicitations for the provision of transportation
6 infrastructure projects. Such a solicitation shall set forth the
7 proposed parameters for the transportation infrastructure project and
8 shall be subject to approval of the board pursuant to section nine
9 hundred thirty-one of the executive law.

10 § 505. Preliminary acceptance of best value proposals. 1. After a
11 solicitation made pursuant to section nine hundred thirty-one of the
12 executive law, the commissioner shall review all proper proposals and
13 may preliminarily accept and advance to the board for approval the
14 proposal that is determined by the commissioner to be the best value as
15 defined in section one hundred sixty-three of the state finance law,
16 considering the following:

17 (a) a public need for the proposed transportation infrastructure
18 project;

19 (b) the reasonableness of estimated costs, benefits and liabilities of
20 the proposed transportation infrastructure project;

21 (c) the compatibility of the proposed transportation infrastructure
22 project and the scheduling of its development or implementation and its
23 connections to or role within the existing transportation system and the
24 compatibility with the transportation plans of the state and of any
25 affected local jurisdictions;

26 (d) the feasibility of the financing of the development, construction,
27 implementation and/or operation of the proposed transportation infras-
28 tructure project;

29 (e) the qualifications, experience, and financial capacity of the
30 public and/or private entity providing the transportation infrastructure
31 project; and

32 (f) whether the proposed transportation infrastructure project satis-
33 fies any other criteria established in the solicitation made pursuant to
34 section nine hundred thirty-one of the executive law.

35 2. The commissioner shall not accept or advance any proposal unless
36 the aggregate life of project cost for the transportation infrastructure
37 project is less than the estimate provided in the cost analysis made
38 pursuant to section five hundred three of this article.

39 § 506. General provisions. 1. Nothing in this article shall be
40 construed to require the commissioner or board to accept any proposal,
41 or enter into any agreement with any public and/or private entity.

42 2. Nothing in this article shall be deemed to limit the applicability
43 of existing powers and authority of the commissioner or to require the
44 commissioner to advance any project through the provisions of this arti-
45 cle.

46 3. Notwithstanding any provision of law to the contrary, the depart-
47 ment may convey any interest in property under the jurisdiction of the
48 department to a public and/or private entity pursuant to the terms of a
49 transportation infrastructure agreement entered into pursuant to section
50 five hundred one of this article, provided however that no such convey-
51 ance shall be a fee simple absolute and any conveyance of an interest in
52 property in excess of thirty-five years shall require approval by a
53 super-majority of the board pursuant to article forty-three of the exec-
54 utive law.

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1 4. Nothing in this article shall be construed as a waiver of or limitation upon the sovereign immunity of the state or any instrumentality thereof.

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4 5. The commissioner is hereby authorized to promulgate any rules and regulations deemed necessary or desirable for the implementation of this article.

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7 6. Projects undertaken by the commissioner pursuant to this article shall be subject to the requirements of article eight of the environmental conservation law, and, where applicable, the requirements of the national environmental policy act.

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11 § 507. Agreements. Notwithstanding any provision of law to the contrary, the commissioner, through transportation infrastructure agreements entered into pursuant to section five hundred one of this article, may provide for:

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15 1. The planning, acquisition, design, engineering, environmental analysis, construction, reconstruction, rehabilitation, restoration, establishment, improvement, renovation, extension, repair, management, operation, maintenance, development and/or financing of transportation infrastructure by a single public or private entity or combination of public and private entities;

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21 2. The allocation of responsibility and timing for specific project elements, revenue-sharing arrangements, allocation of financial responsibility for cost overruns, allocation of development costs, insurance or surety requirements, liability for non-performance, standards and incentives for performance, default, termination, buy-back, renegotiation or amendment clauses, inspection clauses, financial reporting, accounting and auditing standards, environmental performance standards, any other rights and duties; and

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28 3. The crossing of any street, highway, railroad, canal or navigable water course or right-of-way, or other roadway so long as the crossing does not unreasonably interfere with the reasonable use thereof.

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32 § 508. Revenues. Any department revenues derived from any lease, concession or other financing structure pursuant to a transportation infrastructure agreement may only be used for the purpose of the development of transportation infrastructure.

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36 § 509. Condemnation and operation in the event of a default. In the event a public or private entity defaults on its obligations under a transportation infrastructure agreement entered into pursuant to section five hundred one of this article, the commissioner with board approval is hereby authorized but not required to acquire, in the name of the people of the state, all or any portion of any transportation infrastructure constructed or under construction by such public or private entity, with any damages suffered to the state as a result of such default being an offset to the compensation provided for the acquisition of the transportation infrastructure. The commissioner, with board approval, may also terminate the transportation infrastructure agreement and exercise any other rights or remedies which may be available to the department at law or in equity. In the event of such acquisition and notwithstanding any provision of law to the contrary, the department is hereby authorized, but is not required, to operate and maintain the transportation infrastructure.

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52 § 510. Federal, state and local assistance. 1. Notwithstanding any provision of law to the contrary, the commissioner, in relation to transportation infrastructure agreements entered into pursuant to section five hundred one of this article, may:

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1 (a) Take any action to obtain federal, state or local assistance for a
2 transportation infrastructure project that serves the purposes of this
3 article and may enter into any contracts required to receive such
4 assistance. The commissioner may use such assistance for the implementa-
5 tion of the transportation infrastructure agreements entered into pursu-
6 ant to section five hundred one of this article.

7 (b) Agree to make grants or loans or other forms of assistance for the
8 development and/or operation of the transportation infrastructure
9 project from time to time from amounts received from the federal, state,
10 or any local government, or any agency or instrumentality thereof.

11 2. Nothing in this article or in a transportation infrastructure
12 agreement entered into pursuant to this article shall be deemed to
13 enlarge, diminish or affect the authority, if any, concerning the debt
14 capacity of the state or any other public entity.

15 § 511. Police powers; violations of law. Notwithstanding any
16 provisions of law to the contrary:

17 1. All police officers of the state and of each affected local jurisdic-
18 tion, shall have the same powers and jurisdiction within the limits
19 of the transportation infrastructure as they have in their respective
20 areas of jurisdiction and such police officers shall have access to the
21 transportation infrastructure at any time for the purpose of exercising
22 such powers and jurisdiction. This authority does not extend to the
23 private offices, buildings, garages, and other improvements of a private
24 entity to any greater degree than the police power extends to any other
25 private buildings and improvements.

26 2. To the extent the transportation infrastructure is a highway, road,
27 bridge, tunnel, overpass, or similar transportation infrastructure for
28 motor vehicles, the traffic and motor vehicle laws generally applicable
29 to such infrastructure under the jurisdiction of the department shall
30 apply to conduct on the transportation infrastructure. Punishment for
31 offenses shall be as prescribed by law for conduct occurring on similar
32 transportation infrastructure in the state.

33 § 512. Powers and duties of the private entity. Notwithstanding any
34 provisions of law to the contrary:

35 1. The private entity shall have all power allowed by law generally to
36 a private entity having the same form of organization as the private
37 entity and shall have the power to develop, maintain and/or operate the
38 transportation infrastructure and/or enter into service contracts or
39 other agreements in connection with the use thereof.

40 2. The private entity may lease or acquire any other right to use or
41 develop, maintain and/or operate the transportation infrastructure
42 consistent with subdivision three of section five hundred six of this
43 article.

44 § 513. Confidentiality. Any request for proposal or agreement entered
45 pursuant to this article shall make provision for the protection of
46 interests and rights in intellectual property and trade secrets and
47 confidential information otherwise protected by state or federal law.

48 § 514. Severability clause. If any section, clause or provision of
49 this article shall be determined to be unconstitutional or be ineffec-
50 tive in whole or in part, to the extent that it is not unconstitutional
51 or ineffective, it shall be valid and effective and no other section,
52 clause or provision shall, on account thereof, be deemed invalid or
53 ineffective.

54 § 3. The executive law is amended by adding a new article 43 to read
55 as follows:

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ARTICLE 43

INNOVATIVE INFRASTRUCTURE DEVELOPMENT BOARD

Section 930. Innovative infrastructure development board.931. Powers and duties.

§ 930. Innovative infrastructure development board. 1. There is hereby established in the executive department an innovative infrastructure development board ("board") to consist of nine members, who shall be appointed as follows:(a) three shall be appointed by the governor, provided that one shall be the commissioner of transportation and of the remaining two, one each shall be from each of the two major political parties; (b) two shall be appointed on the written recommendation of the temporary president of the senate; (c) two shall be appointed on the written recommendation of the speaker of the assembly; (d) one shall be appointed on the written recommendation of the minority leader of the senate; and (e) one shall be appointed on the written recommendation of the minority leader of the assembly.

2. The governor shall designate the chair from among the members of the board.

3. (a) At least one member each appointed by the governor, temporary president of the senate and speaker of the assembly shall be an expert in transportation, and/or public finance and/or infrastructure management.

(b) At least one member each appointed by the governor, temporary president of the senate and speaker of the assembly shall be from the private sector, provided, however that the member appointed pursuant to this paragraph may be the same as that member appointed pursuant to paragraph (a) of this subdivision.

(c) No member of the board shall also be a member of the legislature.

4. The members of the board shall receive no compensation for their service as members, but shall be entitled to actual necessary expenses incurred in the performance of their duties. Members of the board shall be considered public officers for purposes of section seventeen of the public officers law.

5. A quorum shall consist of a majority of the members of the board. A quorum shall be required to conduct business. Approval of any matter properly before the board shall require the affirmative vote of the majority of the board; provided however that any provision of a transportation infrastructure agreement, as defined in section five hundred of the transportation law, subdivision one of section three hundred eighty-eight of the public authorities law or subdivision one of section twelve hundred seventy-i of the public authorities law, which provides for the conveyance of any interest in excess of thirty-five years shall require an affirmative vote by a super-majority of six members for approval.

6. Meetings shall be called by the chair or by a majority of those members appointed. Meetings shall be held at least bi-annually.

7. The board may appoint such officers and employees as it may require for the performance of its duties and fix and determine their qualifications, duties, and compensation, and retain or employ counsel, auditors and private financial consultants and other services on a contract basis or otherwise for rendering professional, business or technical services and advice; such authority shall be subject to appropriation.

8. The board shall establish by-laws for the management and regulation of its affairs.

§ 931. Powers and duties. 1. Solicitation of proposals. The board may approve and publicly solicit a preliminary proposal advanced pursuant to

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1 section five hundred four of the transportation law, subdivision four of
2 section three hundred eighty-eight of the public authorities law, or
3 subdivision four of section twelve hundred seventy-i of such law, or may
4 publicly solicit other proposals from public and/or private entities for
5 transportation infrastructure projects as defined in subdivision six of
6 section five hundred of the transportation law, subdivision one of
7 section three hundred eighty-eight of the public authorities law, subdivi-
8 vision one of section twelve hundred seventy-i of such law or subdivi-
9 sion one of section five hundred forty-three of such law.

10 2. Approval of best value proposals. (a) The board may approve a
11 proposal preliminarily accepted pursuant to section five hundred five of
12 the transportation law, subdivision five of section three hundred eight-
13 y-eight of the public authorities law, subdivision six of section twelve
14 hundred seventy-i of such law, subdivision five of section five hundred
15 forty-three of such law, or any other proposal properly submitted in
16 response to a solicitation made pursuant to subdivision one of this
17 section if the board determines that such proposal presents the best
18 value as defined in section one hundred sixty-three of the state finance
19 law considering the following:

20 (i) a public need for the proposed transportation infrastructure
21 project;

22 (ii) the reasonableness of estimated costs, benefits and liabilities
23 of the proposed transportation infrastructure project;

24 (iii) the compatibility of the proposed transportation infrastructure
25 project, and the scheduling of its development or implementation and its
26 connections to or role within the existing transportation system and the
27 compatibility with the transportation plans of the state and of any
28 affected local jurisdictions;

29 (iv) the feasibility of the financing of the development,
30 construction, implementation and/or operation of the proposed transpor-
31 tation infrastructure project;

32 (v) the qualifications, experience, and financial capacity of the
33 public and/or private entity providing the transportation infrastructure
34 project; and

35 (vi) whether the proposed transportation infrastructure project satis-
36 fies any other criteria established by the board in the solicitation
37 made pursuant to subdivision one of this section.

38 (b) The board shall not approve any proposal unless the aggregate life
39 of project cost for the transportation infrastructure project is less
40 than the estimate provided in the cost analysis made pursuant to section
41 five hundred three of the transportation law, subdivision three of
42 section three hundred eighty-eight, subdivision three of section twelve
43 hundred seventy-i of such law or subdivision three of section five
44 hundred forty-three of such law.

45 (c) The board may only approve a proposal containing the conveyance of
46 any interest in excess of thirty-five years with the affirmative vote of
47 a super-majority as set forth in subdivision five of section nine
48 hundred thirty of this article.

49 3. Approval of transportation infrastructure agreements. Board
50 approval shall be required of any transportation infrastructure agree-
51 ment to be entered into pursuant to section five hundred one of the
52 transportation law, subdivision two of section three hundred eighty-
53 eight, subdivision two of section twelve hundred seventy-i, or subdivi-
54 sion two of section five hundred forty-three of the public authorities
55 law.

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1 4. Approval of acquisition of all or part of transportation infras-
2 tructure. Board approval shall be required for the acquisition of all or
3 any part of any transportation infrastructure pursuant to section five
4 hundred ten of the transportation law, subdivision nine of section three
5 hundred eighty-eight of the public authorities law or subdivision ten of
6 section twelve hundred seventy-i of such law.

7 5. Annual report. The board shall prepare an annual report and shall
8 submit such report on or before January thirty-first of each year to the
9 governor, the temporary president of the senate, the speaker of the
10 assembly and the chairs of the senate and assembly transportation
11 committees. (a) The annual report shall include, but need not be limited
12 to:

13 (i) details of any solicitation or preliminary solicitation made or
14 prepared during the reporting period;

15 (ii) details of any proposal submitted or accepted pursuant to a
16 public solicitation during the reporting period;

17 (iii) details on the progress of ongoing transportation infrastructure
18 project agreement negotiations;

19 (iv) details on any amendments to existing transportation infrastruc-
20 ture agreements during the reporting period;

21 (v) details of on-going transportation infrastructure projects,
22 including but not limited to the meeting or failure to meet any time
23 deadlines, the achievement or failure to achieve any performance goals,
24 any cost overruns, any default and any other information pertinent to
25 the project's ongoing operation; and

26 (vi) an accounting of any revenues and expenditures associated with
27 ongoing transportation infrastructure projects during the reporting
28 period.

29 (b) The annual report may additionally include any recommendations for
30 legislation related to transportation infrastructure project develop-
31 ment.

32 § 4. The public authorities law is amended by adding a new section 388
33 to read as follows:

34 § 388. Innovative infrastructure development. Notwithstanding any
35 other provisions of law to the contrary:

36 1. As used in this section, unless a different meaning appears from
37 the context, the terms:

38 (a) "Private entity" means any association, corporation, limited
39 liability company, partnership, firm, business trust, joint venture,
40 not-for-profit entity, fund or other private business entity.

41 (b) "Public entity" means the state, the federal government, any other
42 state, any bi-state authority or commission, any multi-state authority
43 or commission, any multi-national authority or commission, any nation,
44 any province, or any agency, commission, public authority, public bene-
45 fit corporation, political subdivision or municipality thereof, or any
46 other governmental entity, or any combination of the foregoing.

47 (c) "Transportation infrastructure" means the thruway system as
48 defined in section three hundred fifty-one of this title and the
49 provisions for the movement of people, vehicles, goods or information
50 on, by or through the use of the thruway system and shall include
51 services provided pursuant to transportation infrastructure agreements.

52 (d) "Transportation infrastructure agreement" shall mean any agreement
53 entered into by the authority pursuant to subdivision two of this
54 section.

55 (e) "Transportation infrastructure project" shall mean the planning,
56 acquisition, design, engineering, environmental analysis, construction,

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1 reconstruction, restoration, rehabilitation, establishment, improvement,
2 renovation, extension, repair, management, operation, maintenance,
3 development and/or financing of transportation infrastructure, includ-
4 ing, but not limited to, agreements relating to the distribution of fare
5 and toll payment media and electronic payment devices, and the estab-
6 lishment and collection of user fees, pursuant to one or more transpor-
7 tation infrastructure agreement.

8 (f) "User fees" mean the rates, tolls, fares, rentals or fees or other
9 charges imposed for or associated with the use and operation of all or a
10 portion of transportation infrastructure pursuant to a transportation
11 infrastructure agreement.

12 (g) "Board" means the innovative infrastructure development board as
13 established by section nine hundred thirty of the executive law.

14 2. Notwithstanding the provisions of any law to the contrary, the
15 authority is authorized, as additional corporate purposes thereof, to
16 enter into transportation infrastructure agreements, on such terms and
17 conditions as the authority deems appropriate and subject to the
18 approval of the director of budget and the board, and in accordance with
19 section one hundred twelve of the state finance law, with public and/or
20 private entities to provide for, or in support of, or associated with
21 transportation infrastructure projects. In furtherance of such agree-
22 ments, the authority may:

23 (a) accept in accordance with the state finance law and the public
24 officers law, any appropriation, grant, or offer of funds or property or
25 other forms of assistance for the purposes of this section from any
26 public and/or private entity and to comply with the terms and conditions
27 thereof;

28 (b) accept, pursuant to the terms of a transportation infrastructure
29 agreement, property or any interest therein and transportation infras-
30 tructure to be maintained as part of the thruway system. Any such inter-
31 est in transportation infrastructure so acquired shall be deemed to have
32 been acquired by the authority or at the authority's request pursuant to
33 this title;

34 (c) utilize any of its powers or authority to achieve the purposes of
35 this section including but not limited to the power to issue bonds,
36 notes and other obligations;

37 (d) finance all or any part of the costs to the authority or to any
38 public and/or private entity of any transportation infrastructure
39 project, including financing through or accompanied by one or more leas-
40 es or concessions of such project or any part thereof by or to such
41 entity or entities and/or by or to the authority or any of its subsid-
42 aries or affiliates;

43 (e) utilize the authority's eminent domain powers, pursuant to
44 sections three hundred fifty-eight and three hundred fifty-eight-a of
45 this title, on such terms and conditions as the authority deems appro-
46 priate, to acquire property required for transportation infrastructure
47 projects; and

48 (f) provide for the collection and/or retention of user fees pursuant
49 to this article; provided however that any provision of a transportation
50 infrastructure agreement which provides for increases in user fees on
51 infrastructure currently subject to user fees, establishment of user
52 fees in a new location on infrastructure currently subject to user fees,
53 or the establishment of user fees on newly constructed infrastructure or
54 infrastructure improved to increase capacity shall be consistent with
55 the powers of the authority to establish or increase user fees pursuant
56 to this title.

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1 3. Cost analysis. Prior to any solicitation of proposals made pursuant
2 to section nine hundred thirty-one of the executive law the authority
3 shall conduct a study and issue a report which shall detail the risk
4 adjusted estimated life of project cost for the proposed transportation
5 infrastructure project were the authority to undertake such project
6 through traditional means of procurement and financing.

7 4. Notwithstanding any provision of law to the contrary, the authority
8 is authorized to prepare preliminary solicitations for the provision of
9 transportation infrastructure projects. Such solicitations shall set
10 forth the proposed parameters of the project and shall be subject to
11 approval of the board pursuant to section nine hundred thirty-one of the
12 executive law.

13 5. (a) After a solicitation made pursuant to section nine hundred
14 thirty-one of the executive law, the authority shall review all proper
15 proposals and may preliminarily accept and advance to the board for
16 approval the proposal that is determined by the authority to be the best
17 value as defined in section one hundred sixty-three of the state finance
18 law considering the following:

19 (i) a public need for the proposed transportation infrastructure
20 project;

21 (ii) the reasonableness of estimated costs, benefits and liabilities
22 of the proposed transportation infrastructure project;

23 (iii) the compatibility of the proposed transportation infrastructure
24 project and the scheduling of its development or implementation and its
25 connections to or role within the existing thruway system and the
26 compatibility with the transportation plans of the authority and of any
27 state or local jurisdictions;

28 (iv) the feasibility of the financing of the development,
29 construction, implementation and/or operation of the proposed transpor-
30 tation infrastructure project;

31 (v) the qualifications, experience, and financial capacity of the
32 public and/or private entity providing the transportation infrastructure
33 project; and

34 (vi) whether the proposed transportation infrastructure project satis-
35 fies any other criteria established in the solicitation made pursuant to
36 section nine hundred thirty-one of the executive law.

37 (b) The authority shall not accept or advance any proposal unless the
38 aggregate life of project cost for the transportation infrastructure
39 project is less than the estimate provided in the cost analysis made
40 pursuant to subdivision three of this section.

41 6. (a) Nothing in this section shall be construed to require the
42 authority or board to make any solicitation, accept any proposal or
43 enter into any agreement with any public and/or private entity.

44 (b) Nothing in this section shall be deemed to: (i) limit the author-
45 ity's existing powers and authority; (ii) require the authority to
46 accept any project through the provisions of this section; (iii) require
47 the authority to enter into any agreements pursuant to this section; or
48 (iv) require the authority to take any action that would contradict or
49 impair any existing authority contract or agreement with its bondholders
50 or other entities.

51 (c) Notwithstanding any provision of law to the contrary, the authori-
52 ty may convey an interest in property, in which the authority has an
53 interest to a public and/or private entity pursuant to the terms of a
54 transportation infrastructure agreement, provided however that no such
55 interest shall be a fee simple absolute and any conveyance of an inter-
56 est in property in excess of thirty-five years shall require approval of

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1 a super-majority of the board pursuant to article forty-three of the
2 executive law.

3 (d) The authority is hereby authorized to promulgate any rules and
4 regulations deemed necessary or desirable for the implementation of this
5 section.

6 (e) Projects undertaken by the authority pursuant to this article
7 shall be subject to the requirements of article eight of the environ-
8 mental conservation law, and, where applicable, the requirements of the
9 national environmental policy act.

10 7. Notwithstanding any provision of law to the contrary, transporta-
11 tion infrastructure agreements entered into pursuant to this section may
12 provide for:

13 (a) The planning, acquisition, design, engineering, environmental
14 analysis, construction, reconstruction, restoration, rehabilitation,
15 establishment, improvement, renovation, extension, repair, management,
16 operation, maintenance, development and/or financing of transportation
17 facilities and the provision of transportation infrastructure by a
18 single public or private entity or combination of public and private
19 entities;

20 (b) The allocation of responsibility and timing for specific project
21 elements, revenue-sharing arrangements, allocation of financial respon-
22 sibility for cost overruns, allocation of development costs, insurance
23 or surety requirements, liability for non-performance, standards and
24 incentives for performance, default, termination, buy-back, renegoti-
25 ation or amendment clauses, inspection clauses, financial reporting,
26 accounting and auditing standards, environmental performance standards,
27 any other rights and duties;

28 (c) The imposition by the authority, or the establishment by the
29 public and/or private entity with which the authority contracts pursuant
30 to this section, of user fees and the pledge of all or any portion ther-
31 eof in connection with any financing thereon consistent with paragraph
32 (f) of subdivision two of this section and existing contracts or resol-
33 utions relating thereto; and

34 (d) The crossing of any street, highway, railroad, canal or navigable
35 water course or right-of-way, or other roadway so long as the crossing
36 does not unreasonably interfere with the reasonable use thereof.

37 8. Any authority revenues derived from any lease, concession or other
38 financing structure pursuant to a transportation infrastructure agree-
39 ment may only be used for the purpose of the development of transporta-
40 tion infrastructure.

41 9. In the event a public or private entity defaults on its obligations
42 under a transportation infrastructure agreement entered into pursuant to
43 subdivision two of this section, the authority with board approval is
44 hereby authorized but not required to acquire all or any portion of any
45 transportation infrastructure constructed or under construction or
46 development by or in conjunction with such public or private entity,
47 with any damages suffered to the authority as a result of such default
48 being an offset to the compensation provided for the acquisition of the
49 transportation infrastructure. The authority may also terminate the
50 transportation infrastructure agreement and exercise any other rights or
51 remedies which may be available to it at law or in equity. In the event
52 of such acquisition and notwithstanding any provision of law to the
53 contrary, the authority is hereby authorized, but not required, to oper-
54 ate and maintain the transportation infrastructure, including the impo-
55 sition and collection of applicable user fees.

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1 10. Notwithstanding any provisions of law to the contrary, the author-
2 ity, through transportation infrastructure agreements may:

3 (a) take any action to obtain federal, state or local assistance for a
4 transportation infrastructure project that serves the public purpose of
5 this chapter and may enter into any contracts required to receive such
6 federal assistance. The authority may use such assistance for the imple-
7 mentation of the transportation infrastructure agreements entered into
8 pursuant to subdivision two of this section; and

9 (b) agree to make grants or loans or other forms of assistance for the
10 development and/or operation of the transportation infrastructure
11 project from time to time from amounts received from the federal, state,
12 or local government, or any agency or instrumentality thereof.

13 11. Nothing in this section or in a transportation infrastructure
14 agreement entered into pursuant to this section shall be deemed to
15 enlarge, diminish or affect the authority, if any, otherwise possessed
16 by the authority to take action that would impact the debt capacity of
17 the state or any other public entity.

18 12. Notwithstanding any provisions of law to the contrary:

19 (a) the private entity shall have all power allowed by law generally
20 to a private entity having the same form of organization as the private
21 entity and shall have the power to develop and/or operate the transpor-
22 tation infrastructure and impose user fees pursuant to a transportation
23 infrastructure agreement consistent with paragraph (f) of subdivision
24 two of this section and/or enter into service contracts or other agree-
25 ments in connection with the use thereof.

26 (b) the private entity may lease or acquire any other right to use or
27 develop and/or operate the transportation infrastructure consistent with
28 paragraph (c) of subdivision six of this section; and

29 (c) in operating the transportation infrastructure, the private entity
30 may pursuant to a transportation infrastructure agreement make classi-
31 fications according to reasonable categories for assessment of user fees
32 provided such private entity gets necessary approval in accordance with
33 the terms of the transportation infrastructure agreement.

34 13. Any request for proposal or agreement entered pursuant to this
35 section shall make provision for the protection of interests and rights
36 in intellectual property and trade secrets and information otherwise
37 protected by state or federal law.

38 14. If any clause or provision of this section shall be determined to
39 be unconstitutional or be ineffective in whole or in part, to the extent
40 that it is not unconstitutional or ineffective, it shall be valid and
41 effective and no other clause or provision shall, on account thereof, be
42 deemed invalid or ineffective.

43 § 5. The public authorities law is amended by adding a new section
44 1270-i to read as follows:

45 § 1270-i. Innovative infrastructure development. Notwithstanding any
46 other provisions of law to the contrary:

47 1. As used in this section, unless a different meaning appears from
48 the context, the terms:

49 (a) "Private entity" means any association, corporation, limited
50 liability company, partnership, firm, business trust, joint venture,
51 not-for-profit entity, fund or other private business entity;

52 (b) "Public entity" means the state, the federal government, any other
53 state, any bi-state authority or commission, any multi-state authority
54 or commission, multi-national authority or commission, any nation, any
55 province, or any agency, commission, public authority, public benefit

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1 corporation, political subdivision or municipality thereof, or any other
2 governmental entity, or any combination of any of the foregoing;

3 (c) "Transportation infrastructure" shall mean any transportation
4 facility as set forth in subdivision seventeen of section twelve hundred
5 sixty-one of this title and shall include, in addition, any project
6 authorized by subdivision nine of section five hundred fifty-three of
7 this chapter and any related services, including, but not limited to,
8 the provisions for the movement of people, vehicles, goods or informa-
9 tion on, by or through the use of transportation facilities as set forth
10 in subdivision seventeen of section twelve hundred sixty-one of this
11 title or any project authorized by subdivision nine of section five
12 hundred fifty-three of this chapter, and shall include services provided
13 pursuant to transportation infrastructure agreements;

14 (d) "Transportation infrastructure agreement" shall mean any agreement
15 entered into by the authority pursuant to subdivision two of this
16 section;

17 (e) "Transportation infrastructure project" shall mean the planning,
18 acquisition, design, engineering, environmental analysis, construction,
19 reconstruction, restoration, rehabilitation, establishment, improvement,
20 renovation, extension, repair, management, operation, maintenance,
21 development and/or financing of transportation infrastructure including,
22 but not limited to, agreements relating to the distribution of fare and
23 toll payment media and electronic payment devices, and the setting,
24 collection and settlement of user fees pursuant to one or more transpor-
25 tation infrastructure agreements;

26 (f) "User fees" means the rates, tolls, fares, rentals, fees or other
27 charges imposed for or associated with the use and operation of all or a
28 portion of transportation infrastructure pursuant to the transportation
29 infrastructure agreement; and

30 (g) "Board" means the innovative infrastructure development board as
31 established by section nine hundred thirty of the executive law.

32 2. Notwithstanding the provisions of any law to the contrary, the
33 authority is authorized, in addition to its other rights and powers not
34 inconsistent with the provisions of this section, on behalf of itself
35 and/or any of its subsidiaries and affiliates, to enter into transporta-
36 tion infrastructure agreements, on such terms and conditions as the
37 authority deems appropriate, and subject to the approval of the director
38 of budget and the board and in accordance with section one hundred
39 twelve of the state finance law, with public and/or private entities to
40 provide for, or in support of, or associated with transportation infras-
41 tructure projects. In furtherance of such agreements, the authority
42 may:

43 (a) accept in accordance with the state finance law and the public
44 officers law, any appropriation, grant or offer of funds or property or
45 other forms of assistance for the purposes of this article from any
46 public and/or private entity and comply with the terms and conditions
47 thereof;

48 (b) accept, pursuant to the terms of a transportation infrastructure
49 agreement, any property (or any interest therein), including, but not
50 limited to, any such interests in transportation infrastructure and any
51 property transferred from the city of New York, acting by its mayor
52 alone, needed or useful for or in connection with any transportation
53 infrastructure project;

54 (c) issue its notes or bonds, including notes and bonds issued pursu-
55 ant to section twelve hundred seventy-d of this title, to finance all or
56 any part of the costs of any transportation infrastructure project;

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1 (d) finance all or any part of the costs to the authority or to any
2 public and/or private entity of any transportation infrastructure
3 project, including financing through or accompanied by one or more leas-
4 es or concessions of such project or any part thereof by or to such
5 entity or entities and/or by or to the authority or any of its subsid-
6 aries or affiliates;

7 (e) utilize any of its powers or authority or the power and authority
8 of any of its subsidiaries and affiliates in furtherance of the purposes
9 of this section;

10 (f) utilize the authority's eminent domain powers, pursuant to the
11 eminent domain procedure law, on such terms and conditions as the
12 authority deems appropriate, to acquire property required for transpor-
13 tation infrastructure projects; and

14 (g) provide for the collection and/or retention of user fees pursuant
15 to this article; provided however that any provision of a transportation
16 infrastructure agreement which provides for increases in user fees on
17 infrastructure currently subject to user fees, establishment of user
18 fees in a new location on infrastructure currently subject to user fees,
19 or the establishment of user fees on newly constructed infrastructure or
20 infrastructure improved to increase capacity shall be consistent with
21 the powers of the authority to establish or increase user fees pursuant
22 to this title.

23 3. Cost analysis. Prior to any solicitation of proposals made pursuant
24 to section nine hundred thirty-one of the executive law, the authority
25 shall conduct a study and issue a report which shall detail the risk
26 adjusted estimated life of project cost for the proposed transportation
27 infrastructure project were the department to undertake such project
28 through traditional means of procurement and financing.

29 4. Notwithstanding any provision of law to the contrary, the authority
30 is authorized to prepare preliminary solicitations for the provision of
31 transportation infrastructure projects. Such solicitations shall set
32 forth the proposed parameters of the project and shall be subject to
33 approval of the board pursuant to section nine hundred thirty-one of the
34 executive law.

35 5. For any part of a transportation infrastructure project located
36 within the city of New York, neither the provisions of section one
37 hundred ninety-seven-c of the New York city charter, relating to a
38 uniform land use review procedure, nor the provisions of any other local
39 law of the city of New York of like or similar tenor or import shall
40 apply to the acquisition of any real property (or any interest therein)
41 for the purposes of any transportation infrastructure project by the
42 authority or its designee then owned by the city nor to the transfer to
43 the authority or its designee for such purposes of the right of use,
44 occupancy, control or possession of any real property (or interest ther-
45 ein), whether presently owned or hereafter acquired by the city;
46 provided in each such case, however, that if at the time of such
47 proposed acquisition or transfer the real property which is the subject
48 of such acquisition or transfer is not then being utilized for a transit
49 or transportation purpose or is not an insubstantial addition to such
50 property contiguous thereto;

51 (a) the authority shall, unless a submission with respect to such
52 property has previously been made and approved as herein provided,
53 submit to the community board for the community district in which such
54 property is located, data with respect to the proposed use of such prop-
55 erty and to the design of any facility proposed to be constructed there-
56 on;

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1 (b) such community board shall inform the city council of the city of
2 New York, with copies to the city planning commission of the city of New
3 York and the authority, of its views and recommendations with respect
4 thereto within forty-five days of such submission, and if the community
5 board shall fail to so inform the city council within such period it
6 shall be deemed to have recommended the proposal; and

7 (c) the city council shall, within forty-five days of the recommenda-
8 tion of the community board, approve or disapprove such acquisition or
9 transfer, and if the city council shall fail to act within such period
10 it shall be deemed to have approved the same.

11 (d) Each transportation infrastructure project shall be considered to
12 be a facility, operation or property of the authority for purposes of
13 all of the provisions of this title, including, but not limited to, the
14 special treatment of such facilities, operations and properties under
15 subdivisions eight, eleven and twelve of section twelve hundred sixty-
16 six of this title and the exemptions set forth in section twelve hundred
17 seventy-five of this title. A transportation infrastructure project
18 shall not be considered a transit project for purposes of this title.

19 6. (a) After a solicitation made pursuant to section nine hundred
20 thirty-one of the executive law, the authority shall review all proper
21 proposals and may preliminarily accept and advance to the board for
22 approval the proposal that is determined by the authority to be the best
23 value as defined in section one hundred sixty-three of the state finance
24 law, considering the following:

25 (i) a public need for the proposed transportation infrastructure
26 project;

27 (ii) the reasonableness of estimated costs, benefits and liabilities
28 of the proposed transportation infrastructure project;

29 (iii) the compatibility of the proposed transportation infrastructure
30 project and the scheduling of its development or implementation and its
31 connections to or role within the existing transportation system and the
32 compatibility with the transportation plans of the authority and of any
33 state or local jurisdictions;

34 (iv) the feasibility of the financing of the development,
35 construction, implementation and/or operation of the proposed transpor-
36 tation infrastructure project;

37 (v) the qualifications, experience, and financial capacity of the
38 public and/or private entity providing the transportation infrastructure
39 project; and

40 (vi) whether the proposed transportation infrastructure project satis-
41 fies any other criteria established in the solicitation made pursuant to
42 section nine hundred thirty-one of the executive law.

43 (b) The authority shall not accept or advance any proposal unless the
44 aggregate life of project cost for the transportation infrastructure
45 project is less than the estimate provided in the cost analysis made
46 pursuant to subdivision three of this section.

47 7. (a) Nothing in this section shall be construed to require the
48 authority or board to accept any proposal, make any solicitation or
49 request for competitive proposals, or enter into any agreement with any
50 public and/or private entity.

51 (b) Nothing in this section shall be deemed to:

52 (1) supersede or limit the applicability of the authority's existing
53 powers and authority;

54 (2) require the authority to accept any project through the provisions
55 of this section;

56 (3) require the authority to enter into any agreements hereunder; or

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1 (4) require the authority to take any action that would contradict or
2 impact an existing authority contract or agreement with its bondholders.

3 (c) Notwithstanding any provision of law to the contrary, the authori-
4 ty may convey an interest in property, in which the authority or any of
5 its affiliates or subsidiaries has an interest to a public and/or
6 private entity pursuant to the terms of a transportation infrastructure
7 agreement, provided however that no such interest shall be a fee simple
8 absolute and any conveyance of an interest in property in excess of
9 thirty-five years shall require approval of a super-majority of the
10 board.

11 (d) The authority is hereby authorized to promulgate any rules and
12 regulations deemed necessary or desirable for the implementation of this
13 section.

14 8. Notwithstanding any provision of law to the contrary, transporta-
15 tion infrastructure agreements entered into pursuant to this section may
16 provide for:

17 (a) the planning, acquisition, design, engineering, environmental
18 analysis, construction, reconstruction, restoration, rehabilitation,
19 establishment, improvement, renovation, extension, repair, management,
20 operation, maintenance, development and/or financing of transportation
21 infrastructure projects by a single public or private entity or combina-
22 tion of public and private entities;

23 (b) the allocation of responsibility and timing for specific project
24 elements, revenue-sharing arrangements, allocation of financial respon-
25 sibility for cost overruns, allocation of development costs, insurance
26 or surety requirements, liability for non-performance, standards and
27 incentives for performance, default, termination, buy-back, renegoti-
28 ation or amendment clauses, inspection clauses, financial reporting,
29 accounting and auditing standards, environmental performance standards,
30 any other rights and duties;

31 (c) the establishment, levy and collection of user fees and the pledge
32 of all or any portion thereof in connection with any financing thereon
33 consistent with paragraph (g) of subdivision two of this section and
34 existing contracts or resolutions relating thereto as the authority may
35 deem necessary, convenient or desirable; and

36 (d) the crossing of any street, highway, railroad, canal, navigable
37 water course or right-of-way, or other roadway so long as the crossing
38 does not unreasonably interfere with the reasonable use thereof.

39 9. Any authority revenues derived from any lease, concession or other
40 financing structure pursuant to a transportation infrastructure agree-
41 ment may only be used for the purpose of in the development of transpor-
42 tation infrastructure.

43 10. In the event a public or private entity defaults on its obli-
44 gations under a transportation infrastructure agreement, the authority
45 with board approval is hereby authorized but not required to acquire all
46 or any portion of any transportation infrastructure project constructed
47 by or in conjunction with such public or private entity, with any
48 damages suffered to the authority as a result of such default being an
49 offset to the compensation provided for the acquisition of the transpor-
50 tation infrastructure project. The authority may also terminate the
51 transportation infrastructure agreement and exercise any other rights or
52 remedies which may be available to it at law or in equity. In the event
53 of such acquisition and notwithstanding any provision of law to the
54 contrary, the authority is hereby authorized, but not required, to oper-
55 ate and maintain the transportation infrastructure including the imposi-
56 tion and collection of applicable user fees.

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1 11. Notwithstanding any provision of law to the contrary, the public
2 entity, through transportation infrastructure agreements entered into
3 pursuant to subdivision two of this section, may:

4 (a) take any action to obtain federal, state or local assistance for a
5 transportation infrastructure project that serves the public purpose of
6 this section and may enter into any contracts required to receive such
7 federal assistance; and

8 (b) agree to make grants or loans or other forms of assistance for the
9 development and/or operation of the transportation infrastructure
10 project from time to time from amounts received from the federal, state,
11 or local government, or any agency or instrumentality thereof.

12 12. Nothing in this section or in a transportation infrastructure
13 agreement entered into pursuant to this section shall be deemed to
14 enlarge, diminish or affect the authority, if any, otherwise possessed
15 by the responsible public entity to take action that would impact the
16 debt capacity of the state or the affected jurisdictions.

17 13. Notwithstanding any provisions of law to the contrary:

18 (a) the private entity shall have all power allowed by law generally
19 to a private entity having the same form of organization as the private
20 entity and shall have the power to develop and/or operate the transpor-
21 tation infrastructure and impose user fees pursuant to a transportation
22 infrastructure agreement consistent with paragraph (g) of subdivision
23 two of this section and/or enter into service contracts in connection
24 with the use thereof. No user fees may be imposed by the private entity
25 except as consistent with this section;

26 (b) the private entity may lease or acquire any other right to use or
27 develop and/or operate the transportation infrastructure consistent with
28 paragraph (c) of subdivision seven of this section; and

29 (c) in operating the transportation infrastructure, the private entity
30 may pursuant to a transportation infrastructure agreement make classi-
31 fications according to reasonable categories for assessment of user fees
32 provided such entity gets necessary approval in accordance with the
33 terms of the transportation infrastructure agreement.

34 14. Any request for proposal or agreement entered pursuant to this
35 section shall make provision for the protection of interests and rights
36 in intellectual property and trade secrets and information otherwise
37 protected by state or federal law.

38 15. If any clause or provision of this section shall be determined to
39 be unconstitutional or be ineffective in whole or in part, to the extent
40 that it is not unconstitutional or ineffective, it shall be valid and
41 effective and no other clause or provision shall, on account thereof, be
42 deemed invalid or ineffective.

43 § 6. The public authorities law is amended by adding a new section
44 543 to read as follows:

45 § 543. Innovative infrastructure development. Notwithstanding any
46 other provisions of law to the contrary:

47 1. As used in this section, unless a different meaning appears from
48 the context, the terms:

49 (a) "Private entity" means any association, corporation, limited
50 liability company, partnership, firm, business trust, joint venture,
51 not-for-profit entity, fund or other private business entity.

52 (b) "Public entity" means the state, the federal government, any other
53 state, any bi-state authority or commission, any multi-state authority
54 or commission, any multi-national authority or commission, any nation,
55 any province, or any agency, commission, public authority, public bene-

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1 fit corporation, political subdivision or municipality thereof, or any
2 other governmental entity, or any combination of the foregoing.

3 (c) "Transportation infrastructure" means bridges as defined in subdivi-
4 vision nine of section five hundred twenty-six of this title and the
5 provisions for the movement of people, vehicles, goods or information
6 on, by or through the use of bridges and shall include services provided
7 pursuant to transportation infrastructure agreements.

8 (d) "Transportation infrastructure agreement" shall mean any agreement
9 entered into by the authority pursuant to subdivision two of this
10 section.

11 (e) "Transportation infrastructure project" shall mean the planning,
12 acquisition, design, engineering, environmental analysis, construction,
13 reconstruction, restoration, rehabilitation, establishment, improvement,
14 renovation, extension, repair, management, operation, maintenance,
15 development and/or financing of transportation infrastructure, includ-
16 ing, but not limited to, agreements relating to the distribution of fare
17 and toll payment media and electronic payment devices, and the estab-
18 lishment and collection of user fees, pursuant to one or more transpor-
19 tation infrastructure agreement.

20 (f) "User fees" mean the rates, tolls, fares, rentals or fees or other
21 charges imposed for or associated with the use and operation of all or a
22 portion of transportation infrastructure pursuant to a transportation
23 infrastructure agreement.

24 (g) "Board" means the innovative infrastructure development board as
25 established by section nine hundred thirty of the executive law.

26 2. Notwithstanding the provisions of any law to the contrary, the
27 authority is authorized, as additional corporate purposes thereof, to
28 enter into transportation infrastructure agreements, on such terms and
29 conditions as the authority deems appropriate and subject to the
30 approval of the director of budget and the board, and in accordance with
31 section one hundred twelve of the state finance law, with public and/or
32 private entities to provide for, or in support of, or associated with
33 transportation infrastructure projects. In furtherance of such agree-
34 ments, the authority may:

35 (a) accept in accordance with the state finance law and the public
36 officers law, any appropriation, grant, or offer of funds or property or
37 other forms of assistance for the purposes of this section from any
38 public and/or private entity and to comply with the terms and conditions
39 thereof;

40 (b) accept, pursuant to the terms of a transportation infrastructure
41 agreement, property or any interest therein and transportation infras-
42 tructure to be maintained by the authority. Any such interest in trans-
43 portation infrastructure so acquired shall be deemed to have been
44 acquired by the authority or at the authority's request pursuant to this
45 title;

46 (c) utilize any of its powers or authority to achieve the purposes of
47 this section including but not limited to the power to issue bonds,
48 notes and other obligations;

49 (d) finance all or any part of the costs to the authority or to any
50 public and/or private entity of any transportation infrastructure
51 project, including financing through or accompanied by one or more leas-
52 es or concessions of such project or any part thereof by or to such
53 entity or entities and/or by or to the authority or any of its subsid-
54 iaries or affiliates;

55 (e) utilize the authority's eminent domain powers, pursuant to section
56 five hundred twenty-nine of this title, on such terms and conditions as

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1 the authority deems appropriate, to acquire property required for trans-
2 portation infrastructure projects; and

3 (f) provide for the collection and/or retention of user fees pursuant
4 to this article; provided however that any provision of a transportation
5 infrastructure agreement which provides for increases in user fees on
6 infrastructure currently subject to user fees, establishment of user
7 fees in a new location on infrastructure currently subject to user fees,
8 or the establishment of user fees on newly constructed infrastructure or
9 infrastructure improved to increase capacity shall be consistent with
10 the powers of the authority to establish or increase user fees pursuant
11 to this title.

12 3. Cost analysis. Prior to any solicitation of proposals made pursuant
13 to section nine hundred thirty-one of the executive law the authority
14 shall conduct a study and issue a report which shall detail the risk
15 adjusted estimated life of project cost for the proposed transportation
16 infrastructure project were the department to undertake such project
17 through traditional means of procurement and financing.

18 4. Notwithstanding any provision of law to the contrary, the authority
19 is authorized to prepare preliminary solicitations for the provision of
20 transportation infrastructure projects. Such solicitations shall set
21 forth the proposed parameters of the project and shall be subject to
22 approval of the board pursuant to section nine hundred thirty-one of the
23 executive law.

24 5. (a) After a solicitation made pursuant to section nine hundred
25 thirty-one of the executive law, the authority shall review all proper
26 proposals and may preliminarily accept and advance to the board for
27 approval the proposal that is determined by the authority to be the best
28 value as defined in section one hundred sixty-three of the state finance
29 law considering the following:

30 (i) a public need for the proposed transportation infrastructure
31 project;

32 (ii) the reasonableness of estimated costs, benefits and liabilities
33 of the proposed transportation infrastructure project;

34 (iii) the compatibility of the proposed transportation infrastructure
35 project and the scheduling of its development or implementation and its
36 connections to or role within the existing authority infrastructure and
37 the compatibility with the transportation plans of the authority and of
38 any state or local jurisdictions;

39 (iv) the feasibility of the financing of the development,
40 construction, implementation and/or operation of the proposed transpor-
41 tation infrastructure project;

42 (v) the qualifications, experience, and financial capacity of the
43 public and/or private entity providing the transportation infrastructure
44 project; and

45 (vi) whether the proposed transportation infrastructure project satis-
46 fies any other criteria established in the solicitation made pursuant to
47 section nine hundred thirty-one of the executive law.

48 (b) The authority shall not accept or advance any proposal unless the
49 aggregate life of project cost for the transportation infrastructure
50 project is less than the estimate provided in the cost analysis made
51 pursuant to subdivision three of this section.

52 6. (a) Nothing in this section shall be construed to require the
53 authority or board to make any solicitation, accept any proposal or
54 enter into any agreement with any public and/or private entity.

55 (b) Nothing in this section shall be deemed to: (i) limit the authori-
56 ty's existing powers and authority; (ii) require the authority to accept

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1 any project through the provisions of this section; (iii) require the
2 authority to enter into any agreements pursuant to this section; or (iv)
3 require the authority to take any action that would contradict or impair
4 any existing authority contract or agreement with its bondholders or
5 other entities.

6 (c) Notwithstanding any provision of law to the contrary, the authori-
7 ty may convey an interest in property, in which the authority has an
8 interest to a public and/or private entity pursuant to the terms of a
9 transportation infrastructure agreement, provided however that no such
10 interest shall be a fee simple absolute and any conveyance of an inter-
11 est in property in excess of thirty-five years shall require approval of
12 a super-majority of the board pursuant to article forty-three of the
13 executive law.

14 (d) The authority is hereby authorized to promulgate any rules and
15 regulations deemed necessary or desirable for the implementation of this
16 section.

17 (e) Projects undertaken by the authority pursuant to this article
18 shall be subject to the requirements of article eight of the environ-
19 mental conservation law, and, where applicable, the requirements of the
20 national environmental policy act.

21 7. Notwithstanding any provision of law to the contrary, transporta-
22 tion infrastructure agreements entered into pursuant to this section may
23 provide for:

24 (a) The planning, acquisition, design, engineering, environmental
25 analysis, construction, reconstruction, restoration, rehabilitation,
26 establishment, improvement, renovation, extension, repair, management,
27 operation, maintenance, development and/or financing of transportation
28 facilities and the provision of transportation infrastructure by a
29 single public or private entity or combination of public and private
30 entities;

31 (b) The allocation of responsibility and timing for specific project
32 elements, revenue-sharing arrangements, allocation of financial respon-
33 sibility for cost overruns, allocation of development costs, insurance
34 or surety requirements, liability for non-performance, standards and
35 incentives for performance, default, termination, buy-back, renegoti-
36 ation or amendment clauses, inspection clauses, financial reporting,
37 accounting and auditing standards, environmental performance standards,
38 any other rights and duties;

39 (c) The imposition by the authority, or the establishment by the
40 public and/or private entity with which the authority contracts pursuant
41 to this section, of user fees and the pledge of all or any portion ther-
42 eof in connection with any financing thereon consistent with paragraph
43 (f) of subdivision two of this section and existing contracts or resol-
44 utions relating thereto; and

45 (d) The crossing of any street, highway, railroad, canal or navigable
46 water course or right-of-way, or other roadway so long as the crossing
47 does not unreasonably interfere with the reasonable use thereof.

48 8. Any authority revenues derived from any lease, concession or other
49 financing structure pursuant to a transportation infrastructure agree-
50 ment may only be used for the purpose of the development of transporta-
51 tion infrastructure.

52 9. In the event a public or private entity defaults on its obligations
53 under a transportation infrastructure agreement entered into pursuant to
54 subdivision two of this section, the authority with board approval is
55 hereby authorized but not required to acquire all or any portion of any
56 transportation infrastructure constructed or under construction or

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1 development by or in conjunction with such public or private entity,
2 with any damages suffered to the authority as a result of such default
3 being an offset to the compensation provided for the acquisition of the
4 transportation infrastructure. The authority may also terminate the
5 transportation infrastructure agreement and exercise any other rights or
6 remedies which may be available to it at law or in equity. In the event
7 of such acquisition and notwithstanding any provision of law to the
8 contrary, the authority is hereby authorized, but not required, to oper-
9 ate and maintain the transportation infrastructure, including the impo-
10 sition and collection of applicable user fees.

11 10. Notwithstanding any provisions of law to the contrary, the author-
12 ity, through transportation infrastructure agreements may:

13 (a) take any action to obtain federal, state or local assistance for a
14 transportation infrastructure project that serves the public purpose of
15 this chapter and may enter into any contracts required to receive such
16 federal assistance. The authority may use such assistance for the imple-
17 mentation of the transportation infrastructure agreements entered into
18 pursuant to subdivision two of this section; and

19 (b) agree to make grants or loans or other forms of assistance for the
20 development and/or operation of the transportation infrastructure
21 project from time to time from amounts received from the federal, state,
22 or local government, or any agency or instrumentality thereof.

23 11. Nothing in this section or in a transportation infrastructure
24 agreement entered into pursuant to this section shall be deemed to
25 enlarge, diminish or affect the authority, if any, otherwise possessed
26 by the authority to take action that would impact the debt capacity of
27 the state or any other public entity.

28 12. Notwithstanding any provisions of law to the contrary:

29 (a) the private entity shall have all power allowed by law generally
30 to a private entity having the same form of organization as the private
31 entity and shall have the power to develop and/or operate the transpor-
32 tation infrastructure and impose user fees pursuant to a transportation
33 infrastructure agreement consistent with paragraph (f) of subdivision
34 two of this section and/or enter into service contracts or other agree-
35 ments in connection with the use thereof.

36 (b) the private entity may lease or acquire any other right to use or
37 develop and/or operate the transportation infrastructure consistent with
38 paragraph (c) of subdivision six of this section; and

39 (c) in operating the transportation infrastructure, the private entity
40 may pursuant to a transportation infrastructure agreement make classi-
41 fications according to reasonable categories for assessment of user fees
42 provided such private entity gets necessary approval in accordance with
43 the terms of the transportation infrastructure agreement.

44 13. Any request for proposal or agreement entered pursuant to this
45 section shall make provision for the protection of interests and rights
46 in intellectual property and trade secrets and information otherwise
47 protected by state or federal law.

48 14. If any clause or provision of this section shall be determined to
49 be unconstitutional or be ineffective in whole or in part, to the extent
50 that it is not unconstitutional or ineffective, it shall be valid and
51 effective and no other clause or provision shall, on account thereof, be
52 deemed invalid or ineffective.

53 § 7. This act shall take effect immediately.