REVIEW DRAFT

I-5 Columbia River Crossing Partnership

Analysis of Tolling Authority and Bi-State Compact Options for the Columbia River Crossing Project

Technical Memorandum 8.2 / 8.9

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1. Introduction

1.1 Background

This Technical Memorandum focuses on legal factors that may be encountered in identifying and implementing the institutional framework to construct, operate, and finance the Columbia River Crossing Project (the "Project"). Like many other issues, the institutional form for the project is greatly complicated by its bi-state nature. Not only are two DOTs responsible for the project, there are differences in the authorities of the DOTs and other state laws affecting the project. The nature and significance of these underlying differences play an important role in determining the appropriate institutional form for the project.

It must be noted that there are a large array of non-legal considerations that are not within the scope of this report, but which are essential to determining the proper institutional structure for the project. These include, for example:

- The scope of the project (i.e., does the project include transit, tolling, I-5 and I-205, a multi-year highway improvement program,
- Are other parties involved (i.e., private partners, private development, regional transit districts, local municipalities, etc.)?
- Does the project include tolling?
- The scope of what is to be covered by the structure (i.e., is the structure limited to construction? or does the scope include construction and operations? does the structure include a tolling authority? etc.)
- The financing arrangements.
- Policy, legislative and practical political considerations.
- Are the various components of the project included in one comprehensive structure, or included in a series of individually-focused institutional structures?
- How much control of the project do the DOTs desire to retain?

1.2 Definitions

Some of the key terms used in explaining institutional frameworks (i.e. compact, joint powers agreement, cooperative agreement, etc.) are used inconsistently. The term "compact" is used in some reports to refer to <u>any</u> agreement between two or more states. In fact Washington law essentially adopts this terminology when it states that any bi-state agreement entered into under RCW 39.34 has "*the status of an interstate compact*."[1] Other reports, drawing from the Compact Clause of the U.S. Constitution, use the term

[1] RCW 39.34.040

"compact" more selectively to only refer to a bi-state agreement that has been approved by the U.S. Congress. This report adopts the latter terminology; it uses the term "compact" only for congressionally-approved agreements. In this report, the term "joint powers agreement" and "cooperative agreement" are used interchangeably to mean a bi-state agreement that has been enacted by the DOTs and/or by the state legislatures; but not the US Congress.

1.3 Options for Establishing Institutional Structure for the Project

In the near future, ODOT and WSODT will have to enter into some kind of agreement that integrates the activities of the agencies into a consolidated effort. The desired degree of integration or consolidation will dictate the actual terms of the agreement, but under any scenario an agreement will be required that states its purposes and how that purpose will be accomplished. The agreement may be administered by WSDOT and/or ODOT, or by a board or commission created specifically for this purpose. If a special entity is created, the agreement will have to specify its composition and powers. The agreement will form the basis for the institutional structure, and the desired legal framework will emanate from the terms of the agreement. This report examines the legal parameters of the two basic institutional framework options:

- Option 1: Joint Powers (or Cooperative) Agreement
- Option 2: Interstate Compact (Congressionally Approved)

1.4 Organization of Report

This Technical Memorandum is organized as follows:

- Section 2 details the Oregon and Washington statutes permitting ODOT and WSDOT to enter joint powers agreements for the project.

- Section 3 details the process for forming an interstate compact and the legal consequences of employing (or not employing) an interstate compact. Since the law of interstate compacts is derived from case law, Section 3 provides synopses of some of the seminal cases. It also summarizes the factors that commonly are addressed in compacts.

- Section 4 provides a sketch survey of various institutional forms currently in operation for tolling projects.
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- Section 5 provides summary conclusions and observations.

- The appendices provide a sampling of existing interstate compacts. Among others, it includes the compact passed by Oregon, but not Washington, for the 1994 South-North LRT Project.

2. Option 1: Joint Powers Agreement

2.1 Introduction to Joint Powers Agreement

For the most part, the authority of WSDOT to enter into agreements with ODOT is provided under RCW 39.34. This legislation refers to such agreements as "cooperative agreements" and "joint powers agreements." ODOT's authority to enter into agreements with WSDOT is primarily obtained through ORS 190. Oregon's legislation uses the term "agreement" and "interstate cooperation" to refer to the relationship it creates. Notwithstanding the terms used to describe the agreement, WSDOT's and ODOT's authorities are remarkably similar; on many factors the authorities are identical.

Generally, both DOTs can share their authorities to the extent the other state allows (and both states do allow), and neither DOT can shed any responsibility or liability it has under its state laws by entering into such agreements. The following sub-sections detail each state's respective authority, and outlines considerations for its application to the Columbia River Crossing Project.

2.2 Current Statutory Authority for ODOT to Enter a Joint Powers Agreement

ODOT may enter into agreements with WSDOT (or any other state agency of Washington) for joint or cooperative action.[2] In such agreements, any authority exercised by ODOT may be exercised and enjoyed jointly with WSDOT or any other Washington public agency to the extent that the laws of Washington permit such joint exercise or enjoyment.[3] Agreements allowing for such joint authority must specify:[4]

- Its duration
- The organization
- Composition and nature of any separate legal or administrative entity created
- The purpose of the agreement
- The method of financing the joint or cooperative undertaking
- The methods to be employed to terminate the agreement

Prior to taking effect, such agreements must be reviewed and approved as to its legal form by the Attorney General.[5]

If ODOT enters into an interstate cooperation agreement, it may expend funds and/or supply staff or services to the entity that operates the joint undertaking.[6] However, such agreements are not permitted to relieve ODOT of any obligation or responsibility imposed on it by law, except for certain state administrative and contract requirements.[7]

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[2] ORS 190.420(2)
[3] ORS 190.420(1)
[4] ORS 190.420(3)
[5] ORS 190.430(1)
[6] ORS 190.440
[7] ORS 190.420(4)

2.3 Current Statutory Authority for WSDOT to Enter a Joint Powers Agreement

The powers and authority for WSDOT to enter bi-state agreements conferred by RCW 39.34 is supplemental to authorities conferred by any other law.[8] RCW 47.04 and RCW 47.56 provide additional authorities. These authorities are discussed below.

WSDOT is permitted to jointly exercise its authorities with ODOT[9], and to enter into agreements for such purpose, including agreements that create a separate legal or joint administrative entity to carry out the cooperation agreement.[10] The required elements for the agreement are generally the same as required under Oregon law (described above).[11] However, if a separate entity is not created by the agreement, the agreement must contain, in addition to the factors outlined above for ODOT, the following:[12]

- Provision for an administrator or a joint board responsible for administering the cooperative undertaking. In the case of a joint board, public agencies party to the agreement must be represented.

- The manner of acquiring, holding and disposing of real and personal property used in the cooperative undertaking.

Similar to Oregon law, when a separate entity is created, the agreement may not relieve the participating agencies of their legal obligations, except that (i) the performance of the entity can satisfy the obligation of participating agencies to perform, and (ii) the entity can satisfy certain contract procedure requirements.[13]

Also similar to Oregon law, any agency entering into an agreement under RCW 39.34 may:

- Appropriate funds and supply property, personnel, and services to the administrative joint board or entity created to operate the cooperative undertaking.[14]

- Accept loans or grants of federal, state or private funds provided each of the participating public agencies is authorized by law to receive such funds.[15]

- Contract with other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform.[16]

[8] RCW 39.34.100
[9] RCW 39.34.030(1)
[10] RCW 39.34.030(2)
[11] RCW 39.34.030(3)
[12] RCW 39.34.030(4)
[13] RCW 39.34.030(5)
[14] RCW 39.34.060
[15] RCW 39.34.070
[16] RCW 39.34.080

WSDOT is also expressly authorized to join financially or in other ways with ODOT (or other public agencies), or with the federal government to:

- Erect, acquire right-of-way for, construct, operate, or maintain any bridge forming a boundary between Washington and Oregon.[17]

- Plan, develop, and establish urban public transportation systems[18] in conjunction with new or existing highway facilities.[19]

- Enter into and perform agreements with federal agencies as may be necessary to secure federal grants, loans, or other assistance on its own behalf or on behalf of other public or private recipients for: (i) public transportation purposes, including but not limited to, bus transportation, specialized transportation services for the elderly and handicapped, and ride sharing activities; and (ii) rail transportation.[20]

- Enter into agreements for the purpose of implementing an investigation of the feasibility of any toll bridge project forming a portion of the boundary of Washington; use funds available to it to carry out such an investigation; and include in the agreement a provision requiring reimbursement for any funds advanced to the project from proceeds derived from the sale of bonds or out of tolls derived from the project.[21]

Further, when it appears that a state highway will be benefited by the construction of a public works project, including any urban public transportation system, within the state of Washington by any Washington municipality or state agency or federal agency, WSDOT enter into an agreement to pay a portion of the cost of the public works project up to the value of the benefits derived from the construction of the public works project to the state highway.[22] Under any such agreement WSDOT may contribute to the cost of the public works project by (i) making direct payment to the state agency or municipality or federal agency involved in the project, from any funds appropriated to WSDOT and available for highway purposes, (ii) by doing a portion of the project, or (iii) in any other manner as may be deemed advisable by WSDOT.

[17] RCW 47.04.080
[18] Under RCW 47.04.082 the term "urban public transportation system" means a system for the public transportation of persons or property by buses, street cars, trains, electric trolley coaches, other public transit vehicles, or any combination thereof operating in or through predominantly urban areas and owned and operated by the state, any city or county or any municipal corporation of the state, including all structures, facilities, vehicles and other property rights and interest forming a part of such a system.
[19] RCW 47.04.081
[20] RCW 47.04.170
[21] RCW 47.56.042
[22] RCW 47.08.070

3. Option 2: Interstate Compact requiring Legislative and Congressional Approval

3.1 Introduction to Interstate Compacts

The concept of Interstate Compacts emanates from Article 1: Section 10, Clause 3 of the U.S Constitution (the "Compacts Clause"), which states in relevant part:

> *No state shall, without the consent of Congress … enter into any agreement or compact with another state … unless actually invaded, or in such imminent danger as will not admit of delay.*

Neither the constitution nor any federal law further explains further the form or process for creating an interstate compact. Frequently there have been questions as to what constitutes an interstate compact, and when congressional approval is required. As a result, the particulars of interstate compacts have been defined through case law.

The following paragraphs explain the legal implications of Interstate Compacts, and briefly summarize some of the cases that have shaped their meaning and procedures.

3.2 What is an Interstate Compact?

An intestate compact is an agreement between two or more states that meets certain indicia established by the courts. If the agreement falls under one or more of these indicia, the agreement is a compact and congressional approval is required for the compact to be valid. If the agreement is congressionally approved, the agreement is a "compact" even if it does not fall under one of the indicia. The indicia discussed in this Section 3.2 must be considered along with the factors for determining when congressional approval is required, which are discussed in Section 3.3.

In 1985, the U.S. Supreme Court analysis in *Northeast Bancorp Inc v. Board of Governors of the Federal Reserve System*[23] summarized the indicia. *Northeast Bancorp* addressed whether reciprocal statutes passed by two states constituted an interstate compact within the meaning of the Compact Clause. Connecticut and Massachusetts had reciprocal statutes allowing bank holding companies located in other New England states to acquire in-state banks. These statutes had a requirement whereby, for example, if Maine were acquiring a Connecticut bank, Maine would have to give the Connecticut bank privileges equivalent to those contained in the Connecticut statute. Because the statutes were reciprocal, imposed regional limitations, and were not approved by Congress, the Federal Reserve argued that the statutes were an invalid interstate compact. Note that in this case there was not an 'agreement' per se; rather the reciprocal statutes themselves were alleged to constitute a "compact."

[23] *Northeast Bancorp, Inc. v. Board of Governors of Federal Reserve System*, 472 U.S. 159, 105 S.Ct. 2545, 86 L.Ed.2d 112 (1985)

To analyze this claim, the U.S. Supreme Court identified four indicia of an interstate compact:

- A joint, regulatory organization or body
- Statutes conditioned on action by the other states involved
- The states are not free to modify or repeal their laws unilaterally
- Statutes requiring reciprocation of a regional limitation.

It should be noted that the Court did not state that these were the only indicia of a compact, nor did it provide general rules of how to apply these indicia in all cases. But it did decide *Northeast Bancorp* on the basis of these indicia, holding that the reciprocal statutes did not constitute a compact requiring congressional approval because: (a) the statutes did not require the states acquiring banks to impose regional limitations similar to those in the contested statutes, (b) the statutes did not create a joint administrative commission, (c) the effect of the statutes was not conditioned upon the action of any other states, and (d) the states could unilaterally modify or repeal the statutes.

3.3 When Congressional Approval of a Bi-State Agreement is Required

Recall that Article I, Section 10, Clause 3 of the United States Constitution provides that "*No State shall, without the consent of Congress… enter into agreement or compact with another State* …" Read literally, the language of the "Compact Clause," implies that all agreements between states require the consent of Congress. But there is a line of U.S. Supreme Court cases that found that Congressional consent is not required for all (or even most) agreements between states. The seminal case on this point is *Virginia v. Tennessee.*[24] In this 1893 case, the United States Supreme Court held that, only those bi- or multiple-state agreements that affect the power of the national government or the "political balance" between states and the federal government require the consent of Congress.

In 1978 in *United States Steel Corporation v. Multistate Tax Commission,*[25] corporate taxpayers brought a lawsuit against the Multistate Tax Commission (MTC) arguing that the Multistate Tax Compact, which created MTC, was invalid because it had not received Congressional consent. Essentially the taxpayers asked the Court to abandon its ruling in *Virginia v. Tennessee*. Instead, the Court re-affirmed its rule, stating that the Compact Clause only applies to agreements between states that:

- Tend to increase the political power of the states, and
- May encroach upon the supremacy of the federal government.

Applying this test, the Court found that the Multistate Tax Compact therefore was valid without Congressional consent because MTC could not do anything more than its

[24] *Virginia v. Tennessee*, 148 U.S. 503, 13 S.Ct. 728, 37 L.Ed. 537 (1893)
[25] *United States Steel Corporation v. Multistate Tax Commission*, 434 U.S. 452, 98 S.Ct. 799, 54 L.Ed.2d 682, (1978)

member states could do on their own; and the Compact did not increase state power to the detriment of the federal government.

3.4 General Process for Creating a Congressionally-Approved Interstate Compact

Not only is there not a statutory definition of 'interstate compact,' there are no statutory procedures for enacting an interstate compact. Case law has held that in order to grant its consent to an interstate compact, Congress must only pass an act or joint resolution stating that it consents. Congress may consent in advance to an interstate compact[26] or it may give its express or implied approval after the states have formally enacted a compact.[27] The typical process proceeds as follows:

- An agreement is negotiated by participating states.
- Once agreed upon, the agreement is adopted by the legislatures of the participating states.
- The governors of the participating states approve (or do not veto) the compact legislation.
- The compact is transmitted to Congress for approval.
- Congress enacts the compact.
- The participating states take the actions required by the compact to effectuate the compact.

This process is recommended for the Columbia River Crossing Project, should a congressionally-approved compact be desired.

The last step in the recommended process requires participating states to effectuate the compact. Typically, interstate compacts or the related authorizing legislation set forth specific procedures for effectuating the compact. Unless these procedures are explicitly followed, the compact may not be binding and enforceable, even if congressionally approved. *Sullivan v. Commissioner Dept. of Transportation Bureau of Driver Licensing*[28] is a case on point. In *Sullivan*, the language of the "Driver License Compact of 1961" specifically provided that the compact provisions "*enter into force and become effective as to any state when it has enacted the [*Compact*] into law*." However, the Pennsylvania legislature did not enact the compact itself into law; instead authorizing the Secretary of the Pennsylvania Department of Transportation to enter into the compact (which set up multiple-state procedures for notification of traffic violations). Because the legislature simply authorized the Secretary to enter into the compact rather than enact the compact itself into law, as required by the language of the compact, the Pennsylvania Supreme Court held that the compact was not effective in Pennsylvania. The lesson of *Sullivan* is:

[26] For example, the Pacific Northwest Electric Power and Conservation Planning Act provided advance consent to the participating states to establish an interstate council.
[27] For example, see *Cuyler v. Adams*, 449 U.S. 433, 101 S.Ct. 703, 66 L.Ed.2d 641 (1981)
[28] *Sullivan v. Com., Dept. of Transp., Bureau of Driver Licensing*, 708 A.2d 481 (Pa. 1998)

- The compact and/or authorizing legislation must be clear about what needs to be done, if anything, to effectuate the compact, and
- The procedures set forth in the compact/authorizing legislation must be fully and precisely followed by the states.

3.5 Effect of Congressional Consent

An important legal question was addressed in several cases – does Congressional consent actually transform an interstate compact into a federal law? The 1981 US Supreme Court case *Cuyler v. Adams* concluded that it does. In *Cuyler* a prisoner argued that he was entitled to a hearing before being transferred to a different state under a congressionally approved compact implementing the Interstate Detainers Act (IDA). While *Cuyler* was on appeal in federal court, a Pennsylvania state court in a different case decided that prisoners were entitled to such a hearing. The federal Court of Appeals in *Cuyler* held that this state court decision was not binding upon the federal courts because the compact was a federal law by virtue of receiving Congressional consent. This federal Court of Appeals holding was appealed to the U.S. Supreme Court, which held that "*where Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the States' agreement into federal law under the Compact Clause*." As a federal law, it supercedes inconsistent state laws.

In 1983, a federal Court of Appeals further explained the implications of congressional consent in *Washington Metropolitan Area Transit Authority v. One Parcel of Land in Montgomery County, Md.*[29] *One Parcel of Land* involved the Washington Metropolitan Area Transit Authority Compact, under which the Washington Metropolitan Area Transit Authority (WMATA) operates. Using the *Cuyler* test, the court found the WMATA Compact to be federal law. In doing so, it noted:

- Not every compact that is Congressionally approved will become federal law, only those compacts whose subject matter is appropriate for Congressional legislation, in addition to receiving Congressional consent, will become federal law.
- The "historical practice" of securing Congressional legislation for interstate compacts out of caution and convenience is not a controlling consideration in determining whether an interstate compact is federal law.
- Compacts that are approved by Congress that deal with a subject matter that is appropriate for Congressional legislation will become federal law, even if the congressional approval was not necessary because the compact did not threaten federal supremacy.

Because a congressionally-approved interstate compact is federal law, the court in *One Parcel of Land* also found that federal courts can review state court holdings that a

[29] *Washington Metropolitan Area Transit Authority v. One Parcel of Land in Montgomery County, Md.*, 706 F.2d 1312 (4th Cir. 1983)

compact is invalid on state constitutional grounds; even though federal courts normally cannot review state court interpretations of their state constitutions.

3.6 Interpretation of Interstate Compacts

Interstate compacts are both statutes and contracts. They are statutes because the compacts are normally adopted by state legislatures and Congress as part of the enactment process. However, interstate compacts also are contractual agreements between the signatory states. States take on certain obligations as a result of entering an interstate compact and such obligations can be legally enforced. Given interstate compacts' dual statutory-contract nature, both the bodies of law apply to judicial interpretations of interstate compacts.[30]

For example, in the 1998 U.S. Supreme Court case *New Jersey v. New York*[31] there was a dispute over ownership of a part of Ellis Island that had been filled-in after the original boundary was set by an 1834 congressionally-approved interstate compact. Using principles of statutory interpretation, the U.S. Supreme Court decided that the filled-in part of Ellis Island belonged to New Jersey. The U.S Supreme Court took a different tack in deciding *Texas v. New Mexico.*[32] This case involved the allocation of water under the Pecos River Compact. New Mexico had breached the Pecos River Compact by not delivering to Texas a certain amount of water each year. The U.S. Supreme Court required monetary damages to be considered using classic contract law reasoning.

3.7 Amendment of Interstate Compacts

Some compacts provide specific procedures for amendments. Absent a clear provision to the contrary, courts typically find that compacts cannot be unilaterally modified or nullified; instead each of the member states must approve the amendment.

For example, in *State of Nebraska ex rel. Nelson v. Central Interstate Low-Level Radioactive Waste Commission*[33] a dispute arose over proposed changes to the voting rights on the Central Interstate Low-Level Radioactive Waste Commission (LRWC), which administered a congressionally approved multiple-state compact. The original compact provided for one vote per state. The commission members agreed to seek legislative amendments in their respective states that would alter the voting membership of the commission. Some but not all states passed the amendment. Because legislative bodies in the states that would have lost voting power rejected the amendment, the federal District Court invalidated it, even though it was initially approved by the commission. Since the compact had received Congressional approval, it was also questioned whether Congress would need to approve any amendments to the compact.

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[30] For example, see *Carchman v. Nash*, 473 U.S. 716, 105 S.Ct. 3401, 87 L.Ed.2d 917 (1985); and *California Tahoe Regional Planning Agency v. Jennings*, 594 F.2d 181 (9th Cir. 1979)
[31] *New Jersey v. New York*, 118 S.Ct. 1726 (1998)
[32] *Texas v. New Mexico*, 482 U.S. 124 (1987)
[33] *State of Nebraska ex rel. Nelson v. Central Interstate Low-Level Radioactive Waste Commission*, 902 F.Supp. 1046 (D.Neb. 1995)

The court did not decide on this issue, but suggested it thought such congressional approval would be needed.

3.8 Application of State Law

The question arises as to whether the laws of the member states apply to the compact commission. An answer to this question was first articulated by the Pennsylvania Supreme Court, in *Henderson v. Delaware River Joint Toll Bridge Commission.*[34] In this case, the court concluded that laws of a member state can apply to an interstate compact where the compact language allows for (or perhaps does not prohibit) the application of such laws. The courts will look to the language of the compact for guidance as to whether the members intended to restrict each other from making an interstate compact commission subject to certain state laws. Further, if member states have similar laws on a topic, those laws may presumptively apply to an interstate compact commission.

In *Kansas City Area Transportation Authority v. State of Missouri*[35], Kansas City imposed a requirement affecting the Kansas City Area Transportation Authority (KCATA), a commission administering the federally approved Kansas City Area Transportation Compact. The contested code required KCATA to provide space for advertising on their transit vehicles; otherwise KCATA would lose a sales tax benefit provided by Kansas City. KCATA argued that such a requirement was invalid because it created an economic burden upon the compact. The federal Court of Appeals held that the local code could be applied to KCATA because (a) the requirement only applied to KCATA if it chose to utilize the sales tax benefit, and (b) forgoing the tax subsidy would not deprive KCATA of all revenue available to it under the compact.

State environmental regulations also may apply to interstate compacts. For instance, in *California Dept. of Transportation v. City of South Lake Tahoe*[36], CALTRANS filed a lawsuit requiring the Tahoe Regional Planning Agency (TRPA), which administers the congressionally-approved Tahoe Regional Planning Compact, to comply with the California Environmental Quality Act (CEQA). Under CEQA, public agencies must submit reasons for not mitigating certain environmental impacts. TRPA argued that CEQA was not applicable because the compact did not contain any express language reserving for the State the right to impose new environmental requirements. The federal district court disagreed with TRPA, holding that the language of the compact allowed the state to impose such requirements. In reaching this decision, the court (a) pointed to compact language stating that "*every such ordinance, rule or regulation (adopted by TRPA to effectuate its regional plan) shall establish a minimum standard applicable throughout the basin, and any* ***political subdivision*** *may adopt and enforce an equal or higher standard applicable to the same subject of regulation in its territory*" [emphasis added] and (b) concluded that the State of California was a "political subdivision" within the meaning of this provision. It further determined that CEQA did not unilaterally

[34] *Henderson v. Delaware River Joint Toll Bridge Commission*, 66 A.2d 843 (1949)
[35] *Kansas City Area Transportation Authority v. State of Missouri*, 640 F.2d 173 (8th Cir. 1981)
[36] *People, by and through California Dept. of Transportation v. City of South Lake Tahoe*, 466 F.Supp. 527 (E.D.Cal. 1978)

impose a decision on TRPA because CEQA was a disclosure requirement, and did not compel a specific action.

In *International Union of Operating Engineers, Local 68 v. The Delaware River and Bay Authority*, 688 A.2d 569 (1997)[37], the New Jersey Supreme Court determined that the collective bargaining laws of New Jersey applied to the Delaware River and Bay Authority (DRBA), an interstate compact commission. In doing so, it concluded that (a) the compact provided that DRBA may be subject to additional obligations other than those specified in the compact provided they were authorized by the New Jersey and Delaware legislatures, and (b) interstate compact commissions may be subject to certain laws of member states provided those state laws do not intrude on the commission's mission and the laws of the member states are "*substantially similar*." Further it concluded that an interstate compact commission may implicitly consent to regulation by one member state to the compact if the commission voluntarily cooperates with that state law.

3.9 Factors Commonly Found in Existing Compacts

Today, there are more than 200 congressionally-approved interstate compacts exist today, covering such topics as transportation, environment, conservation, child welfare, water allocation, health, education, and crime control. Most of these agreements could have legal effect without congressional approval; although there may have been valid political or other reasons for requesting such approval. The appendix to this Technical Memorandum provides four examples of the transportation-related Interstate Compacts. These include:

- Delaware River Port Authority[38] (See Appendix A)
- Woodrow Wilson Bridge and Tunnel Compact (See Appendix B)
- Buffalo and Fort Erie Public Bridge Authority[39] (See Appendix C)
- Columbia River Light Rail Transit Compact (See Appendix D)

In addition, the Compact for the Port of New York and New Jersey is discussed below in Section 5.1.1.

While specific provisions vary widely among the sampled compacts, there is some consistency in the types of factors addressed in the compact. A preliminary list of factors to be included in the compact for the project, should there be one, was developed based on the sampled compacts and the legal analysis presented above. These factors include:

- Jurisdiction (area)

[37] *International Union of Operating Engineers, Local 68 v. The Delaware River and Bay Authority*, 688 A.2d 569 (1997)

[38] The Delaware River Port Authority was originally the Delaware River Joint Commission. The name was change as its scope expanded beyond operating toll facilities.

[39] Buffalo and Fort Erie Public Bridge Authority was formulated as a public benefit corporation by special acts of the State of New York and the government of Canada.

- Type of Commission
- Number of Commissioners
- Method of Appointment/Election and Dismissal
- Term of Commissioners
- Salary and Expenses of Commissioners
- Powers of the Commission
- Scope of Responsibility (bridge v highway v transit, construction v operations v finance, I-5 v I-5 and I-205, development, etc.)
- Commission Duties
- Quorum
- Voting Requirements (what constitutes approval)
- Borrowing Authority
- Rule-Making Authority
- Power and Procedures for Setting Tolls/Fares
- Taxing Powers and Ability to be Taxed
- Administration of Funds
- Police Powers/Enforcement Procedures
- Applicable Laws (which states laws applies, when)
- Relationship to DOTs
- Procedures to Effectuate Compact
- Relationship to Local and State Permitting Requirements

4 Examples of Institutional Frameworks for Tolling Authorities

A wide variety of institutional structures have been used for toll facilities. A selected sampling is provided below to outline the types of structures and their general provisions.

4.1 Independent Toll Authorities

Independent Toll Authorities are established as a legal entity for issuing bonds to finance construction and ongoing operation and maintenance of one or more toll facilities. Examples of independent toll authorities include:

4.1.1 Port Authority of New York and New Jersey

The Port Authority of New York and New Jersey was established by a bi-state, congressionally-approved compact. The geographic district of the Port Authority is set forth in the compact. The Port Authority of New York and New Jersey manages and maintains bridges, tunnels, bus terminals, airports, PATH and seaports in the NY-NJ area. It is a financially self-supporting public agency that receives no tax revenues from any state or local jurisdiction and has no power to tax. It relies almost entirely on revenues generated by facility users, tolls, fees, and rents.

The bi-state compact establishes the Port Authority as a public corporation with the enumerated powers provided in the compact and "*such other and additional powers as*

shall be conferred upon it by the legislature of either states concurred in by the legislature of the other, or by act or acts of congress." The compact expressly grants the following powers to the Port Authority:

- Purchase, construct, lease, and/or operate any terminal or transportation facility within its district.
- Make charges for the use of such facilities or terminals.
- Hold, lease, own, and/or operate real or personal property; provided the Port Authority may not take any property owned by another governmental entity without the entity's consent.
- Borrow money, and secure same by bonds or mortgages upon any property held by the Port Authority; provided that the Port Authority may not pledge the credit of either state without the affected state's legislative approval.

The Compact reserves to the states the power to regulate the Port Authority's terminals and facilities in the same manner as they regulate such terminals or facilities owned by private entities.

Prior to executing the Compact, the legislatures of New York and New Jersey were required to adopt a comprehensive port development plan. Subsequently, the Port Authority is granted the right to amend or make new plans, and when such plans or amendments are enacted by the Port Authority, they are "*binding on both states with the same force as if incorporated in the [compact*]."

The Port Authority consists of twelve commissioners, six from each state that are appointed by their respective Governor's and confirmed by their respective state legislatures. Voting rights for the Port Authority are set forth in its By-Laws, not the compact. Except for certain procedural votes, for a motion to pass it takes a majority vote by the commissioners appointed by <u>each</u> state. So, for example, if twelve commissioners are present (six from each state), it takes four 'yes' votes by the New York commissioners <u>and</u> four 'yes' votes by the New Jersey commissioners. The Governor of each state retains the right to veto the actions of commissioners from his or her own state.

4.1.2 Illinois State Toll Highway Authority

The Illinois State Toll Highway Authority was created as a Commission by the state legislature[40] to:

> *"... facilitate vehicular traffic by providing convenient, safe and modern highways...it is necessary in the public interest to provide for the construction, operation, regulation and maintenance of a toll highway or system of highways, incorporating therein the benefits of advanced engineering skill, design,*

[40] 605 ILCS 10 (ILCS = Illinois Compiled Statutes)

experience and safety factors, to eliminate existing traffic hazards, and to prevent automotive injuries and fatalities..”

The Illinois State Toll Highway Authority is an administrative agency of the State of Illinois consisting of 11 directors, including:

- The Governor,
- The Secretary of the Department of Transportation, ex officio, and
- Nine directors appointed by the Governor with the advice and consent of the Senate.

Of the nine directors appointed by the Governor, no more than five can be members of the same political party. The appointments must consider the location of toll highway routes so that maximum geographic representation from the areas served by said toll highway routes is accomplished to the extent practicable.

The legislature granted the Authority the power to:

- To acquire, own, use, lease, operate and dispose of personal and real property, including by condemnation.

- To enter into all contracts and agreements necessary or incidental to the performance of its powers.

- To employ and discharge, without regard to the requirements of any civil service or personnel act, such persons the Authority deems desirable, or contract with such persons and on such terms as the Authority deems desirable.

- To acquire, construct, relocate, operate, regulate and maintain a system of toll highways through and within the State of Illinois, but not when the principal or interest on bonds or other instruments evidencing indebtedness of the system are in default or have been in default at any time during the 5 year period prior to the proposed acquisition.

- To facilitate such construction, operation and maintenance and subject to the approval of the Division of Highways of the Department of Transportation, the Authority shall have the full use and advantage of the engineering staff and facilities of the Department.

- To prepare, or cause to be prepared detailed plans, specifications and estimates, from time to time, for the construction, relocation, repair, maintenance and operation of toll highways within the State of Illinois.

- To establish presently the approximate locations and widths of rights of way for future additions to the toll highway system to inform the public and prevent costly and conflicting development of the land involved.

- To pass resolutions, make by-laws, rules and regulations for the management, regulation and control of its affairs, and to fix tolls, and to make, enact and enforce all needful rules and regulations in connection with the construction, operation, management, care, regulation or protection of its property or toll highways/

- To fix, assess, and collect civil fines for a vehicle's operation on a toll highway without the required toll having been paid. The Authority may establish by rule a system of civil administrative adjudication to adjudicate only alleged instances of a vehicle's operation on a toll highway without the required toll having been paid, as detected by the Authority's video surveillance system. Only civil fines may be imposed by administrative adjudication.

- To prescribe rules and regulations applicable to traffic on highways under the jurisdiction of the Authority, concerning:

    - Types of vehicles permitted to use such highways, and classification of such vehicles;
    - Designation of the lanes of traffic to be used by the different types of vehicles permitted upon said highways;
    - Stopping, standing, and parking of vehicles;
    - Control of traffic by means of police officers or traffic control signals;
    - Control or prohibition of processions, convoys, and assemblages of vehicles and persons;
    - Movement of traffic in one direction only on designated portions of highways;
    - Control of the access, entrance, and exit of vehicles and persons to and from said highways; and
    - Preparation, location, and installation of all traffic signs.

4.1.3 Delaware River Port Authority

The Delaware River Port Authority of Pennsylvania and New Jersey (DRPA) was created as a congressionally-approved bi-state compact as the transportation and economic development agency for the southeastern Pennsylvania and southern New Jersey areas. DRPA owns and operates four bridges. Through its Port Authority Transit Corp. (PATCO) subsidiary, DRPA owns the ferry system, the Philadelphia Cruise Terminal, and an Intermodal Rail Center. DRPA is self-sustaining, operating without tax support. It is administered by a 16-member Board of Commissioners, eight from each state. They are appointed by their respective governors, except the auditor-general and treasurer of Pennsylvania who are ex-officio members. All DRPA Commissioners also serve as PATCO's Board of Directors

SECTION NOT COMPLETE

4.1.4 Buffalo and Fort Erie (Peace) Public Bridge Authority

The Peace Bridge is a bi-national compact governed by a ten-member board consisting of five members from New York State and five members from Canada. Public funds have not been granted or used for construction, operation, maintenance, or capital expenditures for the bridge or its maintenance. All capital improvements and operating expenses are funded by tolls and rentals of Peace Bridge-owned property and buildings. In accordance with its legislation, the Peace Bridge operates without shared capital; all current and future surpluses are committed to capital projects and repayment of any outstanding bonds

4.2 Housed-in-DOT Tolling Operations

'Housed in DOT' occurs when no separate entity is created, and instead the DOT owns, operates, and finances toll facility. WSDOT has this authority. Other examples of this type of structure include:

4.2.1 Florida DOT's "Turnpike Enterprise"

4.2.1.1 Introduction

The Turnpike Enterprise within the Florida DOT administers toll collection activities for transportation projects financed by the sale of bonds for toll facilities. The program's primary purpose is to operate and maintain a 443-mile system of limited-access, state-owned and state-operated toll facilities. Its Turnpike mainline passes through 11 counties from north Miami to a junction with Interstate 75 in north central Florida. In addition to the 265-mile mainline, the Turnpike Enterprise includes the 47-mile Homestead Extension, which takes motorists to the top of the Florida Keys; the 23-mile Sawgrass Expressway/Toll 869 in Broward County; the 12-mile Seminole Expressway/Toll 417 in Seminole County; the 15-mile Veterans Expressway/Toll 589 in Tampa; an eight-mile portion of the Bee Line Expressway/Toll 528 in Orlando; the six-mile Southern Connector Extension of the Central Florida GreeneWay/Toll 417 in Orlando; and the 25-mile Polk Parkway.

To achieve this purpose, the Florida Turnpike Enterprise is authorized to plan, develop, own, purchase, lease, or otherwise acquire, demolish, construct, improve, relocate, equip, repair, maintain, operate, and manage the Florida Turnpike System; to expend funds to publicize, advertise, and promote the advantages of using the turnpike system and its facilities; and to cooperate, coordinate, partner, and contract with other entities, public and private, to accomplish these purposes.[41]

4.2.1.2 Organization and Budget of Turnpike Enterprise

The Florida Department of Transportation (FDOT) is established as a decentralized agency consisting of seven geographically-defined districts and the "Turnpike

[41] Section 338.2216(1)(b), Florida Statutes

Enterprise."[42] The responsibility for the turnpike system is delegated by the Secretary of FDOT to the Executive Director of the Turnpike Enterprise, who serves at the pleasure of and reports to the Secretary.[43] The Turnpike Enterprise operates pursuant to its own statutes, separate from those of FDOT. To facilitate the most efficient management of the turnpike enterprise, the Turnpike Enterprise is generally exempt from FDOT policies, procedures, and standards; however, the FDOT Secretary has the authority to apply any such policies, procedures, and standards to the Turnpike Enterprise from time to time as he or she deems appropriate.[44]

The Legislature appropriated $958.4 million and 500 positions from the State Transportation Trust Funds to the Turnpike Enterprise for Fiscal Year 2004-05. No state general revenue funds were appropriated to this program. The number of staff positions in the Turnpike Enterprise has been reduced by over 75 percent over the past decade, as toll operations has been increasingly privatized. In Fiscal Year 2004-05, $62.9 million was budgeted to contract for toll collection services from the private sector. The program collected $521 million in toll revenues in Fiscal Year 2003-04.

The Turnpike Enterprise's operational cost per toll transaction was 14.7 cents in Fiscal Year 2002-03 (most recent data available). This met its objective of having an operational cost of less than 16 cents per toll transaction.

4.2.1.3 Power to Construct and Finance Turnpike Projects

No proposed project can be added to the turnpike system unless the project is determined to be economically feasible, a statement of environmental feasibility has been completed for the project, and the project is determined to be consistent, to the maximum extent feasible, with approved local government comprehensive plans.[45] In this context, "economically feasible" means:[46]

- The estimated net revenues of the proposed turnpike project will be sufficient to pay at least 50 percent of the debt service on the bonds by the end of the 12th year of operation and to pay at least 100 percent of the debt service on the bonds by the end of the 22nd year of operation.
- For turnpike projects financed from revenues of the turnpike system, the project is expected to generate sufficient revenues to amortize project costs within 15 years of opening to traffic.

FDOT may authorize studies of the feasibility and practicality of proposed turnpike projects and may proceed with the design phase of such projects. However, FDOT may not construct a turnpike project without legislative approval. FDOT may not request legislative approval of a proposed turnpike project until the design phase of that project is

[42] Section 20.23(4)(a), Florida Statutes
[43] Section 20.23(e)(1), Florida Statutes
[44] Section 20.23(e)(2), Florida Statutes
[45] Section 338.223(1)(a), Florida Statutes
[46] Section 338.221(8), Florida Statutes

at least 60 percent complete. If a proposed project is found to be economically feasible, consistent, to the maximum extent feasible, with approved local government comprehensive plans of the local governments in which such projects are located, and a favorable statement of environmental feasibility has been completed, FDOT, with the approval of the Legislature, can construct, maintain, and operate the turnpike project.

All obligations and expenses incurred by FDOT must be paid by FDOT and charged to the appropriate turnpike project. FDOT must keep proper records and accounts showing each amount that is so charged. All such obligations and expenses are treated as part of the cost of such project and must be reimbursed to FDOT out of turnpike revenues or out of the bonds.[47]

FDOT is authorized to borrow money the purpose of paying all or any part of the cost of any one or more legislatively approved turnpike projects.[48] The principal and interest on such bonds are payable solely from revenues pledged for their payment.

The proceeds of the bonds of each issue must be used solely for the payment of the cost of the turnpike projects for which such bonds shall have been issued. All revenues and bond proceeds from the turnpike system can be used only for the cost of turnpike projects and turnpike improvements and for the administration, operation, maintenance, and financing of the turnpike system. No revenues or bond proceeds from the turnpike system can be spent for the operation, maintenance, construction, or financing of any project which is not part of the turnpike system.[49]

FDOT must at all times fix, adjust, charge, and collect such tolls for the use of the turnpike system as are required in order to provide a fund sufficient with other revenues of the turnpike system to pay the cost of maintaining, improving, repairing, and operating such turnpike system; to pay the principal of and interest on all bonds issued to finance or refinance any portion of the turnpike system as the same become due and payable; and to create reserves for all such purposes.[50]

When all revenue bonds issued in connection with the turnpike system and the interest on the bonds have been paid, or an amount sufficient to provide for the payment of all such bonds and the interest on the bonds to the maturity of the bonds, or such earlier date on which the bonds may be called, has been set aside in trust for the benefit of the bondholders, the department may assume the maintenance of the turnpike system as part of the State Highway System, except that the turnpike system shall remain subject to sufficient tolls to pay the cost of the maintenance, repair, improvement, and operation of the system and the construction of turnpike projects.[51]

[47] Section 338.223(3), Florida Statutes
[48] Section 338.227(1), Florida Statutes
[49] Section 338.227, Florida Statutes
[50] Section 338.231, Florida Statutes
[51] Section 338.232, Florida Statutes

For non-turnpike projects, FDOT may continue to collect the toll on a revenue-producing project after the discharge of any bond indebtedness related to such project and may increase such toll.[52] All tolls so collected shall first be used to pay the annual cost of the operation, maintenance, and improvement of the toll project. If the revenue-producing project is on the State Highway System, any remaining toll revenue shall be used for the construction, maintenance, or improvement of any road on the State Highway System within the county or counties in which the revenue-producing project is located.[53] If the revenue-producing project is on the county road system, any remaining toll revenue shall be used for the construction, maintenance, or improvement of any other state or county road within the county or counties in which the revenue-producing project is located.[54]

The program's operations and maintenance expenses are initially funded from revenues in the State Transportation Trust Fund, into which a variety of transportation-related funding is placed to pay the costs of the department's programs. However, the department is reimbursed for these costs with revenues generated by the states' toll facilities.

In addition to revenues generated by the program's toll collection activities, local entities also receive loans from the FDOT's Toll Facilities Revolving Trust Fund. This trust fund provides interest-free loans to pay initial development costs such as preliminary engineering, traffic and revenue studies, environmental impact studies, financial advisory services, engineering design, right-of-way map preparation, and right-of-way-land acquisition. These loans are intended to encourage the development and to enhance the financial feasibility of toll facility projects. Loan proceeds must be repaid within 7 to 12 years of the date of the advance or at the time of bond issuance for construction, at the option of the borrower.

As part of its responsibility to operate and maintain toll facilities, FDOT enters into lease-purchase agreements and operating agreements with local expressway and bridge authorities. Under lease-purchase agreements, FDOT consents to pay the annual operations and maintenance costs for the toll facilities so that revenues collected can first be used to pay the facilities' bond debt. FDOT often assumes a position which permits reimbursement of operations and maintenance costs after debt service requirements. Under operating agreements, the local authority continues the planning, management, and operational control of the toll facility, and FDOT assumes the responsibility for toll collection and facility maintenance. FDOT has lease-purchase agreements with the Tampa-Hillsborough County Expressway Authority, Santa Rosa Bay Bridge Authority, Mid-Bay Bridge Authority, Orlando-Orange County Expressway Authority, and the former Broward County Expressway Authority. The department entered into an operating agreement with the Miami-Dade Expressway Authority.

4.2.2 CALTRANS

[52] Section 338.165(1), Florida Statutes
[53] Section 338.165(2), Florida Statutes
[54] Section 338.165(4), Florida Statutes

CALTRANS owns and operates seven toll bridges and owns several other toll roads. The following summarizes the toll authorities of the department.

STILL BEING ADDED

4.3 Independent Toll Authority Contracts with DOT

Independent Toll Authority Contracts with DOT for toll facility operations, while maintaining a separate legal entity for overall management and financing. Examples of this type of structure include:

- Indiana East-West Toll Road, in which IDOT's "Toll Road District" is responsible for construction, maintenance, repair, and operation of the toll roads; while the toll road is responsible for toll collections, road operation, administration, and toll road management.
- Kentucky Transportation Cabinet (the DOT), which operates toll roads under lease-rental agreement with the Turnpike Authority of Kentucky that provide, among other things, annual rental payments to be made from the Cabinet in amounts equal to the debt service on the Authority's bonds, and for the Cabinet to maintain, operate and collect tolls on the toll roads while the bonds are outstanding.

4.4 Independent Toll Authority with DOT Membership on Board of Authority:

In the Independent Toll Authority with DOT Membership on Board of Authority model, the enabling legislation or agreement establishing the toll authority requires the toll authority to include in its board membership a DOT director, commissioner, or other appointee. Examples of this type of structure include:

- Kansas Turnpike Authority
- Maryland Transportation Authority
- Pennsylvania Turnpike Commission
- West Virginia Parkways
- Texas Turnpike Authority

5. Summary Conclusions and Observations

- There is a wide range of choices for the institutional structure for the construction, operation, and financing of the Columbia River Project.

- While one can look to the existing examples to try to determine how to best structure the Project's institutional framework, it really boils-down to the DOT's

determining what they want to do. There is no one institutional framework that is so apparently better than the others that it should be adopted as a model. In fact, it is likely that the terms that will work best for ODOT and WSDOT will be missed if too much focus is placed on existing frameworks and agreements.

- The major differences in institutional structure depend on the terms of the agreement, not the legal framework used to effectuate the agreement.

- For a vast majority of matters, there is no major difference between a Joint Powers Agreement approach and an Interstate Compact approach.

- Both DOTs are currently granted broad authority to enter joint powers agreements with each other. Under this existing authority, an agreement can, for example: (i) designate one DOT to be primarily responsible for all aspects of the Project and provide limited approval authorities to the other, (ii) provide for shared responsibilities under a "consensus" decision-making structure, or (iii) establish a project-specific entity (i.e. joint powers authority) to oversee the project within a scope defined within the agreement.

- A joint powers agreement cannot resolve conflicting state laws If it is desired to have one state's law apply to the bridge, state legislation would be required in addition to the agreement. This approach is more traditionally used with Interstate Compacts, but it is the state legislative action, not the congressional action, that allows this approach. Thus, it can be done with a Joint Powers Agreement approach.

- An Interstate Compact approach must be used if the bi-state agreement grants powers to the states to the detriment of the federal government. It is highly unlikely that the compact for the Project rises to this level. While the compact affects interstate commerce, a federal responsibility, it will probably do so within the confines of existing federal law.

- There are reasons for employing an interstate compact beyond it being legally required. First, it signals a special importance to the Project that may help with energizing federal funding interest. Two, it provides the formalized structure of a regional agency to further bi-state cooperation. Third, it creates the furthest legal separation between the project organization and the DOTs. Fourth, the compact becomes federal law, superceding any inconsistent state laws. Fifth, it best ensures that the agreement cannot be unilaterally terminated or amended by a single state.

- However, the possible advantages of an interstate compact come at price. First, the interstate compact approach is politically difficult. Second, it may be less flexible after it is enacted.

APPENDICES

Appendix A

DELAWARE RIVER JOINT COMMISSION

New Jersey Permanent Statutes

32:3-1. Preamble; agreement

The New Jersey Interstate Bridge Commission, existing by virtue of chapter 271 of the Laws of New Jersey of 1929, approved May 6, 1929, and acts amendatory thereof and supplementary thereto, is hereby authorized to enter into a compact or agreement on behalf of the state of New Jersey with the commonwealth of Pennsylvania in substantially the following form, that is to say:

AGREEMENT BETWEEN THE COMMONWEALTH OF PENNSYLVANIA AND THE STATE OF NEW JERSEY

CREATING THE DELAWARE RIVER JOINT COMMISSION AS A BODY CORPORATE AND POLITIC AND DEFINING ITS POWERS AND DUTIES

Whereas, The commonwealth of Pennsylvania and he [the] state of New Jersey are the owners of a certain bridge across the Delaware river between the city of Philadelphia in the commonwealth of Pennsylvania and the city of Camden in the state of New Jersey; and

Whereas, The Pennsylvania commission, existing by virtue of Act No. 338 of the commonwealth of Pennsylvania, approved July 9, 1919 (Pamphlet Laws 814), and acts amendatory thereof and supplementary thereto, and the New Jersey Interstate Bridge Commission, existing by virtue of chapter 271 of the Laws of New Jersey of 1929, and acts amendatory thereof and supplementary thereto, are acting jointly under the name of the Delaware River Bridge Joint Commission in connection with the operation and maintenance of said bridge; and

Whereas, The interests of the people of the two states will be best served by consolidating the two commissions in corporate form and granting additional powers and authority thereto with reference to the said bridge and to other and further means of communication between the two states in the vicinity of Philadelphia and Camden; and

Whereas, Additional transportation facilities between the two states in the vicinity of Philadelphia and that part of New Jersey opposite thereto will be required in future for the accommodation of the public and the development of both states; and

Whereas, Both states have mutual interests in the development of the Delaware river from Philadelphia and Camden to the sea and particularly in developing the facilities and

promoting the more extensive use of the ports of Philadelphia and Camden by coastwise, intercoastal and foreign vessels; and

Whereas, It is highly desirable that there be a single agency of both states empowered to further the aforesaid interests of both states:

Now, Therefore, The commonwealth of Pennsylvania and the state of New Jersey do hereby solemnly covenant and agree each with the other, as follows:

32:3-2. Delaware River Port Authority, purposes, functions

32:3-2. The body corporate and politic, heretofore created and known as the Delaware River Joint Commission hereby is continued under the name of the Delaware River Port Authority (hereinafter in this agreement called the "commission"), which shall constitute the public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey for the following public purposes, and which shall be deemed to be exercising an essential governmental function in effectuating such purposes, to wit:

(a) The operation and maintenance of the bridge, owned jointly by the two States, across the Delaware river between the city of Philadelphia in the Commonwealth of Pennsylvania and the city of Camden in the State of New Jersey, including its approaches, and the making of additions and improvements thereto.

(b) The effectuation, establishment, construction, acquisition, operation, and maintenance of railroad or other facilities for the transportation of passengers across any bridge or tunnel owned or controlled by the commission, including extensions of such railroad or other facilities necessary for efficient operation in the Port District.

(c) The improvement and development of the Port District for port purposes by or through the acquisition, construction, maintenance or operation of any and all projects for the improvement and development of the Port District for port purposes, or directly related thereto, either directly by purchase, lease or contract, or by lease or agreement with any other public or private body or corporation or in any other manner.

(d) Co-operation with all other bodies interested or concerned with, or affected by the promotion, development, or use of the Delaware river and the Port District.

(e) The procurement from the Government of the United States of any consents which may be requisite to enable any project within its powers to be carried forward.

(f) The construction, acquisition, operation and maintenance of other bridges and tunnels across or under the Delaware river, between the city of Philadelphia or the county of Delaware in the Commonwealth of Pennsylvania and the State of New Jersey, including approaches and the making of additions and improvements thereto.

(g) The promotion as a highway of commerce of the Delaware river, and the promotion of increased passenger and freight commerce on the Delaware river and for such purpose the publication of literature and the adoption of any other means as may be deemed appropriate.

(h) To study and make recommendations to the proper authorities for the improvement of terminal, lighterage, wharfage, warehouse and other facilities necessary for the promotion of commerce on the Delaware river.

(i) Institution through its counsel, or such other counsel as it shall designate, or intervention in, any litigation involving rates, preferences, rebates or other matters vital to the interest of the Port District; provided, that notice of any such institution of or intervention in litigation shall be given promptly to the Attorney General of the Commonwealth of Pennsylvania and to the Attorney General of the State of New Jersey, and provision for such notices shall be made in a resolution authorizing any such intervention or litigation and shall be incorporated in the minutes of the commission.

(j) The establishment, maintenance, rehabilitation, construction and operation of a rapid transit system for the transportation of passengers, express, mail, and baggage, or any of them, between points in New Jersey within the Port District and points in Pennsylvania within the Port District, and intermediate points. Such system may be established either by utilizing existing rapid transit systems, railroad facilities, highways and bridges within the territory involved or by the construction or provision of new rail facilities where deemed necessary, and may be established either directly by purchase, lease or contract, or by lease or agreement with any other public or private body or corporation, or in any other manner.

(k) The performance of such other functions which may be of mutual benefit to the Commonwealth of Pennsylvania and the State of New Jersey insofar as concerns the promotion and development of the Port District for port purposes and the use of its facilities by commercial vessels.

(l) The performance or effectuation of such additional bridge, tunnel, railroad, rapid transit, transportation, transportation facility, terminal, terminal facility, and port improvement and development purposes within the Port District as may hereafter be delegated to or imposed upon it by the action of either State concurred in by legislation of the other.

(m) The unification of the ports of the Delaware river through (i) the acquisition or taking control of any terminal, terminal facility, transportation facility or marine terminal or port facility or associated property within the Port District through purchase, lease or otherwise, or by the acquisition, merger, becoming the successor to or entering into contracts, agreements or partnerships with any other port corporation, port authority or port related entity which is located within the Port District, all in accordance with the applicable laws of the State in which the facility, corporation or authority is located; (ii) the exercise of the other powers granted by this compact; or (iii) the establishment

(whether solely or jointly with any other entity or entities) of such subsidiary corporation or corporations or maritime or port advisory committees as may be necessary or desirable to effectuate this purpose.

(n) The planning, financing, development, acquisition, construction, purchase, lease, maintenance, marketing, improvement and operation of any project, including but not limited to any terminal, terminal facility, transportation facility, or any other facility of commerce or economic development activity; from funds available after appropriate allocation for maintenance of bridge and other capital facilities.

32:3-3. Commissioners, terms, vacancies

32:3-3. The commission shall consist of sixteen commissioners, eight resident voters of the Commonwealth of Pennsylvania and eight resident voters of the State of New Jersey, who shall serve without compensation.

The commissioners for the State of New Jersey shall be appointed by the Governor of New Jersey with the advice and consent of the Senate of New Jersey, for terms of five years, and in case of a vacancy occurring in the office of commissioner during a recess of the Legislature, it may be filled by the Governor by an ad interim appointment which shall expire at the end of the next regular session of the Senate unless a successor shall be sooner appointed and qualify and, after the end of the session, no ad interim appointment to the same vacancy shall be made unless the Governor shall have submitted to the Senate a nomination to the office during the session and the Senate shall have adjourned without confirming or rejecting it, and no person nominated for any such vacancy shall be eligible for an ad interim appointment to such office if the nomination shall have failed of confirmation by the Senate.

Six of the eight commissioners for the Commonwealth of Pennsylvania shall be appointed by the Governor of Pennsylvania for terms of five years. The Auditor General and the State Treasurer of said Commonwealth shall ex-officio be commissioners for said Commonwealth, each having the privilege of appointing a representative to serve in his place at any meeting of the commission which he does not attend personally. Any commissioner who is an elected public official shall have the privilege of appointing a representative to serve and act in his place at any meeting of the commission which he does not attend personally.

All commissioners shall continue to hold office after the expiration of the terms for which they are appointed or elected until their respective successors are appointed and qualify, but no period during which any commissioner shall hold over shall be deemed to be an extension of his term of office for the purpose of computing the date on which his successor's term expires.

32:3-4. Commissioners as board; duties; quorum; gubernatorial veto of minutes

32:3-4. The commissioners shall have charge of the commission's property and affairs and shall for the purpose of doing business constitute a board, but no action of the commissioners shall be binding unless a majority of the members of the commission from Pennsylvania and a majority of the members of the commission from New Jersey shall vote in favor thereof. Notwithstanding the above, each state reserves the right to provide by law for the exercise of a veto power by the Governor of that state over any action of any commissioner from that state at any time within 10 days (Saturdays, Sundays and public holidays in the particular state excepted) after receipt at the Governor's office of a certified copy of the minutes of the meeting at which such vote was taken. Each state may provide by law for the manner of delivery of such minutes, and for notification of the action thereon.

32:3-5. Powers of commission

32:3-5. For the effectuation of its authorized purposes the commission is hereby granted the following powers:

(a) To have perpetual succession.
(b) To sue and be sued.
(c) To adopt and use an official seal.
(d) To elect a chairman, vice-chairman, secretary and treasurer, and to adopt suitable bylaws for the management of its affairs. The secretary and treasurer need not be members of the commission.
(e) To appoint, hire, or employ counsel and such other officers and such agents and employees as it may require for the performance of its duties, by contract or otherwise, and fix and determine their qualifications, duties and compensation.
(f) To enter into contracts.
(g) To acquire, own, hire, use, operate and dispose of personal property.
(h) To acquire, own, use, lease, operate, mortgage and dispose of real property and interests in real property, and to make improvements thereon.
(i) To grant by franchise, lease or otherwise, the use of any property or facility owned or controlled by the commission and to make charges therefor.
(j) To borrow money upon its bonds or other obligations, either with or without security, and to make, enter into and perform any and all such covenants and agreements with the holders of such bonds or other obligations as the commission may determine to be necessary or desirable for the security and payment thereof, including without limitation of the foregoing, covenants and agreements as to the management and operation of any property or facility owned or controlled by it, the tolls, rents, rates or other charges to be established, levied, made and collected for any use of any such property or facility, or the application, use and disposition of the proceeds of any bonds or other obligations of the commission or the proceeds of any such tolls, rents, rates or other charges or any other revenues or moneys of the commission.
(k) To exercise the right of eminent domain within the Port District.
(l) To determine the exact location, system and character of and all other matters in connection with any and all improvements or facilities which it may be authorized to own, construct, establish, effectuate, operate or control.

(m) In addition to the foregoing, to exercise the powers, duties, authority and jurisdiction heretofore conferred and imposed upon the aforesaid the Delaware River Joint Commission by the Commonwealth of Pennsylvania or the State of New Jersey, or both of the said two States.

(n) To exercise all other powers not inconsistent with the constitutions of the two States or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments, and generally to exercise in connection with its property and affairs, and in connection with property within its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.
(o) To acquire, purchase, construct, lease, operate, maintain and undertake any project, including any terminal, terminal facility, transportation facility, or any other facility of commerce and to make charges for the use thereof.
(p) To make expenditures anywhere in the United States and foreign countries, to pay commissions, and hire or contract with experts or consultants, and otherwise to do indirectly anything which the commission may do directly.
(q) To establish one or more operating divisions as deemed necessary to exercise the power and effectuate the purposes of this agreement.

The commission shall also have such additional powers as may hereafter be delegated to or imposed upon it from time to time by the action of either State concurred in by legislation of the other.

It is the policy and intent of the Legislature of the Commonwealth of Pennsylvania and the State of New Jersey that the powers granted by this article shall be so exercised that the American system of free competitive private enterprise is given full consideration and is maintained and furthered. In making its reports and recommendations to the Legislatures of the Commonwealth of Pennsylvania and the State of New Jersey on the need for any facility or project which the commission believes should be undertaken for the promotion and development of the Port District, the commission shall include therein its findings which fully set forth that the facility or facilities operated by private enterprise within the Port District and which it is intended shall be supplanted or added to are not adequate.

32:3-4.2. Return of minutes within 10 days; effect of failure to return

The Governor of New Jersey and the Governor of the Commonwealth of Pennsylvania shall, respectively, within 10 days after the minutes shall have been so delivered, cause the same to be returned to the Delaware River Port Authority either with or without his veto on any action therein recited as having been taken by any commissioner appointed from his State. If said Governors shall not return the minutes within said 10-day period, any action therein recited shall have force and effect according to the wording thereof.

32:3-4.3. Effect of veto within 10 days

If the Governor of New Jersey or the Governor of the Commonwealth of Pennsylvania, within said 10-day period, returns the minutes with a veto against the action of any commissioner from his State recited therein, the action of such commissioner shall be null and of no effect.

32:3-4.4. Effective date

This act shall take effect upon the enactment into law by the Commonwealth of Pennsylvania of legislation having a substantially similar effect as this act, but if the Commonwealth of Pennsylvania shall have already enacted such legislation, this act shall take effect immediately.

32:3-4.5. Findings, declarations

1. a. The Legislature hereby finds that the public's awareness of and participation in governmental actions is essential to maintaining a free society; that the more open a government is with its citizens, the greater the understanding and participation of the public in government; that the public's fundamental right to know the process of governmental decision-making and to review the reasons for those decisions is thwarted when the public's access to governmental meetings is blocked; that government and the agencies created thereby must insure that their actions remain fully accountable to the public.

b. The Legislature declares that for these public policy reasons the Delaware River Port Authority shall develop rules and regulations concerning the right of the public and members of the news media to be present at meetings of the authority as herein provided.

32:3-4.6. Definitions

2. As used in this act:

"Board" means the Board of Commissioners of the Delaware River Port Authority;
"Meeting" means any gathering of a majority of the board at which the effect of the discussions held or the actions taken by the commissioners present is to discuss or act as a unit upon the specific public business of the authority. "Meeting" does not mean a gathering (1) attended by less than an effective majority of the commissioners, or (2) attended by or open to all the members of three or more similar public bodies at a convention or similar gathering;
"News media" means persons representing major wire services, television news services, radio news services and newspapers, whether located in this State or in any other state.
"Port Authority" means the Delaware River Port Authority;
"Public business" means matters which relate in any way, directly or indirectly, to the performance of the functions of the Delaware River Port Authority or the conduct of its business.

Appendix B

WOODROW WILSON BRIDGE AND TUNNEL COMPACT

TITLE I
General Provisions

Article I

There is hereby created the National Capital Region Woodrow Wilson Bridge and Tunnel Authority, hereinafter referred to as the "Authority", which shall embrace the District of Columbia, the cities of Alexandria, Fairfax, and Falls Church, the counties of Arlington and Fairfax, and the political subdivisions of the Commonwealth of Virginia located within those counties, and the counties of Montgomery and Prince Georges in the State of Maryland and the political subdivisions of the State of Maryland located within those counties.

Article II

The Authority shall be an instrumentality and common agency of the District of Columbia, the Commonwealth of Virginia, and the State of Maryland and shall have the powers and duties set forth in this Compact and such additional powers and duties as may be conferred upon it by subsequent action of the governing authorities of the District of Columbia, the Commonwealth of Virginia, and the State of Maryland.

Article III

1. The Authority shall be governed by a Board of 13 members appointed as follows:
(a) Four members shall be appointed by, and serve at the pleasure of, the Governor of the Commonwealth of Virginia;
(b) Four members shall be appointed by, and serve at the pleasure of, the Governor of the State of Maryland, with the advice and consent of the Senate of Maryland;
(c) Four members shall be appointed by, and serve at the pleasure of, the Mayor of the District of Columbia, with the advice and consent of the Council of the District of Columbia; and
(d) One member shall be appointed by the U.S. Secretary of Transportation.
2. Members, other than members who are elected officials, shall have backgrounds in finance, construction lending, and infrastructure policy disciplines. One member each from the District of Columbia, the Commonwealth of Virginia, and the State of Maryland shall be an incumbent elected official. No other member shall hold elective or appointive public office.
3. (a) No Board member, officer, or employee shall:

(1) Be financially interested, either directly or indirectly, in any contract, sale, purchase, lease, or transfer of real or personal property to which the Board or the Authority is a party;
(2) In connection with services performed within the scope of his or her official duties, solicit or accept money or any other thing of value in addition to the compensation or expenses paid to him or her by the Authority; or
(3) Offer money or any other thing of value for, or in consideration of, obtaining an appointment, promotion, or privilege in his or her employment with the Authority.
(b) Any Board member, officer, or employee who shall willfully violate any provision of this section shall, in the discretion of the Board, forfeit his or her office or employment.
(c) Any contract or agreement made in contravention of this section may be declared void by the Board.
(d) Nothing in section 3 of this article shall be construed to abrogate or limit the applicability of any federal, state, or District of Columbia law which may be violated by any action proscribed by this section.
4. The Chairperson of the Authority shall be elected biennially by its members.
5. The members also may elect biennially a secretary and a treasurer, or a secretary-treasurer, who may be members of the Authority, and prescribe their duties and powers.
6. Each member shall serve a 6-year term, except that each signatory shall make its initial appointments as follows:
(a) Two members shall each be appointed for a 6-year term;
(b) One member shall be appointed for a 4-year term; and
(c) One member shall be appointed for a 2-year term.
7. The failure of a signatory or the U.S. Secretary of Transportation to appoint one or more members shall not impair the Authority's creation or preclude the Authority from functioning when vacancies occur, except that the minimum number of members required at any time for the Authority to function shall be seven.
8. Any person appointed to fill a vacancy shall serve for the unexpired term. No member of the Authority shall serve for more than two terms.
9. The members of the Authority, including nonvoting members, if any, shall not be personally liable for any act done, or action taken, in their capacities as members of the Authority, nor shall they be personally liable for any bond, note, or other evidence of indebtedness issued by the Authority. Except as provided in this Compact, only the Authority shall be liable for its contracts and for its torts and those of its agents, members, and employees. Nothing in this Compact shall be construed as a waiver by the District of Columbia, the Commonwealth of Virginia, or the State of Maryland of immunity from suit.
10. Seven members shall constitute a quorum, with the following exceptions:
(a) Eight affirmative votes shall be required to approve bond issues and the annual budget of the Authority;
(b) Two affirmative votes by members from the affected signatory shall be required to approve operations or matters solely intrastate or solely within the District of Columbia; and
(c) Any sole source procurement of property, services, or construction in excess of $100,000 shall require the prior approval of a majority of the members.

11. Members shall serve without compensation and shall reside in the metropolitan Washington, D.C., area. Members shall be entitled to reimbursement for their expenses incurred in attending the meetings of the Authority and while otherwise engaged in the discharge of their duties as members of the Authority.
12. The Authority may employ such engineering, technical, legal, clerical, and other personnel on a regular, part-time, or consulting basis as in its judgment may be necessary for the discharge of its duties. The Authority shall not be bound by any statute or regulation of any signatory in the employment or discharge of any officer or employee of the Authority, except as may be contained in this compact.
13. The Authority may fix and provide for the qualification, appointment, removal, term, tenure, compensation, pension, and retirement rights of its officers and employees without regard to the laws of any of the signatories, and may establish, in its discretion, a personnel system based on merit and fitness and, subject to eligibility, participate in the pension and retirement plans of any signatory, or political subdivision or agency thereof, upon terms and conditions mutually acceptable.
14. The Authority shall establish its office for the conduct of its affairs at a location to be determined by the Authority and shall publish rules and regulations governing the conduct of its operations.
15. The Authority shall adopt procedures that are not in conflict with the applicable federal law on administrative procedures, open meetings, and public information.

Article IV

16. Nothing herein shall be construed:
(a) To amend, alter, or in any way affect the power of the signatories and the political subdivisions thereof to levy and collect taxes on property or income or to levy, assess, and collect franchise or other similar taxes or fees for the licensing of vehicles and the operation thereof; or
(b) To confer any exemption from taxes related to the sale of any material, equipment, or supplies purchased by or on behalf of the Authority.

Article V

17. This Compact shall be adopted by all the signatories in a manner provided by law therefor and shall be signed and sealed in four duplicate original copies. One such copy shall be filed with the Secretary of State of the State of Maryland, the Secretary of the Commonwealth of Virginia, and the Secretary of the District of Columbia in accordance with the laws of each. One copy shall be filed and retained in the archives of the Authority upon its organization. This Compact shall become effective 90 days after the enactment of concurring legislation by, or on behalf of, the District of Columbia, Maryland, and Virginia, and consent thereto by the Congress of the United States and when all other acts or actions have been taken, including the signing and execution of the Title by the Governors of Maryland and Virginia and the Mayor of the District of Columbia.

Article VI

18. Any signatory may withdraw from the Compact upon one year's written notice to that effect to the other signatories. In the event of a withdrawal of one of the signatories from the Compact, the Compact shall be terminated; provided, however, that no revenue bonds, notes, or other evidence of obligation issued pursuant to Article VI of Title II or any other financial obligations of the Authority remain outstanding and that the withdrawing signatory has made a full accounting of its financial obligations, if any, to the Authority and the other signatories.
19. Upon the termination of this Compact, the jurisdiction over the matters and persons covered by this Compact shall revert to the signatories and the federal government, as their interests may appear.

Article VII

20. Each of the signatories pledges to each of the other signatory parties faithful cooperation in the solution and control of transit and traffic problems with the Woodrow Wilson Memorial Bridge and, in order to effect such purposes, agrees to consider in good faith and request any necessary legislation to achieve the objectives of the Compact to the mutual benefit of the citizens living within the Washington, D.C., metropolitan area and for the advancement of the interests of the signatories hereto.

Article VIII

21. The Authority shall not undertake the ownership of the existing Woodrow Wilson Memorial Bridge, or any duties or responsibilities associated herewith, until the Governors of Maryland and Virginia and the Mayor of the District of Columbia have entered into an agreement with the U.S. Secretary of Transportation establishing the federal share of the cost of a new Woodrow Wilson bridge or tunnel. Such federal funds shall be in addition to, and shall not diminish, the federal transportation funding allocated to the District of Columbia, the Commonwealth of Virginia, and the State of Maryland. Upon all parties' approval of this agreement, the Authority shall have sole responsibility for duties concerning ownership, construction, operation, and maintenance of the project, as hereinafter defined.

Article IX

22. If any part or provision of this Compact or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Compact or the application thereof to other persons or circumstances, and the signatories hereby declare that they would have entered into this Compact or the remainder thereof had the invalidity of such provision or application thereof been apparent.
23. This Compact shall be liberally construed to effectuate the purposes for which it is created.

24. The United States District Courts shall have original jurisdiction, concurrent with the courts of the District of Columbia, Maryland, and Virginia, of all actions brought by or against the Authority. Any such action shall be removable to the appropriate United States District Court in the manner provided by 28 U.S.C. 1446.

Woodrow Wilson Memorial Bridge and Tunnel Revenue Bond Act

Article I

Definitions

25. As used in this title, the following words shall have the following meanings:
(a) "Cost," as applied to the project defined in this article, means the cost of acquisition of all lands, structures, rights-of-way, franchises, easements and other property rights and interests; the cost of lease payments; the cost of construction; the cost of demolishing, removing, or relocating any buildings or structures on lands acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, relocated, or reconstructed; the cost to relocate residents or businesses from properties acquired for the project; the cost of any extensions, enlargements, additions, and improvements; the cost of all labor, materials, machinery and equipment, financing charges, and interest on all bonds prior to and during construction and, if deemed advisable by the Authority, of such construction; the cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, and other expenses necessary or incident to determining the feasibility or practicability of constructing the project, administrative expenses, provisions for working capital, and reserves for interest and for extensions, enlargements, additions, and improvements; the cost of bond insurance and other devices designed to enhance the credit worthiness of the bonds; and such other expenses as may be necessary or incidental to the construction of the project, the financing of such construction, and the planning of the project in operation.
(b) "Owner" shall include all persons as defined in section 2(5) of the General Legislative Procedures Act of 1975, effective September 23, 1975 (D.C.Law 1-17; § 1-301.45(5)), having any interest or title in property, rights, franchises, easements, and interests authorized to be acquired by this subchapter.
(c) "Project" means the existing Woodrow Wilson Memorial Bridge and a new bridge or tunnel, or a bridge and tunnel project adjacent to the existing Woodrow Wilson Memorial Bridge and associated rail transit facilities, including any necessary work on highways directly connected to the existing Woodrow Wilson Memorial Bridge, to a new bridge or tunnel; administration, storage, and other buildings and facilities which the Authority may deem necessary for the operation of such project; and all property, rights, franchises, easements, and interests which may be acquired by the Authority for the construction or the operation of such project. Such project shall be substantially the same as that recommended by the Woodrow Wilson Bridge Improvement Study Coordination Committee established in 1992 by the Federal Highway Administration, and as included in the adopted Long Range Plan and Transportation Improvement Program of the National Capitol Region Transportation Planning Board.

Article II

Bonds Not to Constitute a Debt or Pledge of Taxing Power

26. Revenue bonds, notes, or other evidence of obligation issued under the provisions of this subchapter shall not be deemed to constitute a debt or a pledge of the faith and credit of the Authority or of any signatory government or political subdivision thereof, but such bonds, notes, or other evidence of obligation shall be payable solely from the funds herein provided therefor from tolls and other revenues. The issuance of revenue bonds, notes, or other evidence of obligation, under the provisions of this subchapter, shall not directly, indirectly, or contingently obligate the Authority, or any signatory government or political subdivision thereof, to levy or to pledge any form of taxation whatever therefor. All such revenue bonds, notes, or other evidence of obligation shall contain a statement on their face substantially to the foregoing effect.

Article III

Additional Powers of the Authority

27. Without in any manner limiting or restricting the powers heretofore given to the Authority, the Authority is hereby authorized and empowered:
(a) To establish, finance, construct, maintain, repair, and operate the project;
(b) Subject to the approval of the Governors of Maryland and Virginia and the Mayor of the District of Columbia of the agreement referred to in Article VIII of Title I, to assume full rights of ownership of the existing Woodrow Wilson Memorial Bridge;
(c) Subject to the approval of the Governors of Maryland and Virginia and the Mayor of the District of Columbia, and in accordance with the recommendations of the Woodrow Wilson Bridge Improvement Study Coordination Committee, to determine the location, character, size, and capacity of the project; to establish, limit, and control such points of ingress to and egress from the project as may be necessary or desirable in the judgment of the Authority to ensure the proper operation and maintenance of the project; and to prohibit entrance to such project from any point or points not so designated;
(d) To secure all necessary federal, state, and local authorizations, permits, and approvals for the construction, maintenance, repair, and operation of the project;
(e) To adopt and amend bylaws for the regulation of its affairs and the conduct of its business;
(f) To adopt and amend rules and regulations to carry out the powers granted by this article;
(g) To acquire, by purchase or condemnation, in the name of the Authority, and to hold and dispose of, real and personal property for the corporate purposes of the Authority;
(h) To acquire full information to enable it to establish, construct, maintain, repair, and operate the project;
(i) To employ consulting engineers, a superintendent or manager of the project, and such other engineering, architectural, construction and accounting experts, and inspectors, attorneys, and such other employees as may be deemed necessary, and within the

limitations prescribed in this Compact, and to prescribe their powers and duties and to fix their compensation;
(j) To pay, from any available moneys, the cost of plans, specifications, surveys, estimates of cost and revenues, legal fees, and other expenses necessary or incident to determining the feasibility or practicability of financing, constructing, maintaining, repairing, and operating the project;
(k) To issue revenue bonds, notes, or other evidence of obligation of the Authority, for any of its corporate purposes, payable solely from the tolls and revenues pledged for their payment, and to refund its bonds, all as provided in this Compact;
(l) To fix and revise from time to time and to charge and collect tolls and other charges for the use of the project;
(m) To make and enter into all contracts or agreements, as the Authority may determine, which are necessary or incidental to the performance of its duties and to the execution of the powers granted under this Compact;
(n) To accept loans and grants of money, materials, or property at any time from the United States of America, the Commonwealth of Virginia, the State of Maryland, the District of Columbia, or any agency or instrumentality thereof;
(o) To adopt an official seal and alter the same at its pleasure;
(p) Subject to Article III, Section 9 of Title I of this Compact, to sue and be sued, plead and be impleaded, all in the name of the Authority;
(q) To exercise any power usually possessed by private corporations performing similar functions, including the right to expend, solely from funds provided under the authority of this Compact, such funds as may be considered by the Authority to be advisable or necessary in advertising its facilities and services to the traveling public; and
(r) To do all acts and things necessary or incidental to the performance of its duties and the execution of its powers under this Compact.

Article IV

Acquisition of Property

28. The Authority is hereby authorized and empowered to acquire by purchase, whenever it shall deem such purchase expedient, solely from funds provided under the authority of this Compact, such lands, structures, rights-of-way, property, rights, franchises, easements, and other interest in lands, including lands lying under water and riparian rights, which are located within the jurisdictions of the Washington, D.C., metropolitan area, as described in Article I of Title I of this Compact, as it may deem necessary or convenient for the construction and operation of the project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof; and to take title thereto in the name of the Authority.
29. All counties, cities, towns, and other political subdivisions and all public agencies and authorities of the signatories, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant, or convey to the Authority at the Authority's request, upon such terms and conditions as the proper authorities of such counties, cities, towns, political subdivisions, agencies, or authorities may deem reasonable and fair and without the necessity for any advertisement, order of court or

other action or formality, other than the regular and formal action of the authorities concerned, any real property which may be necessary or convenient to the effectuation of the authorized purposes of the Authority, including public roads and other real property already devoted to public use.

30. Whenever a reasonable price cannot be agreed upon, or whenever the owner is legally incapacitated or is absent, unknown, or unable to convey valid title, the Authority is hereby authorized and empowered to acquire by condemnation or by the exercise of the power of eminent domain any lands, property, rights, rights-of-way, franchises, easements, and other property deemed necessary or convenient for the construction or the efficient operation of the project or necessary in the restoration of public or private property damaged or destroyed.

31. Whenever the Authority acquires property under Article IV of this Title, it shall comply with the applicable federal law relating to relocation and relocation assistance. If there is no applicable federal law, the Authority shall comply with the applicable provision of state or District of Columbia law in which the property is located.

Procurement

32. Except as provided in sections 33, 34, and 37, and except in the case of procurement procedures otherwise expressly authorized by federal statute, the Authority, in conducting a procurement of property, services, and construction, shall:

(a) Obtain full and open competition through the use of competitive procedures in accordance with the requirements of this section; and

(b) Use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement. In determining the competitive procedure appropriate under the circumstances, the Authority shall:

(1) Solicit sealed bids if:

(A) Time permits the solicitation, submission, and evaluation of sealed bids;

(B) The award will be made on the basis of price and other price-related factors;

(C) It is not necessary to conduct discussions with the responding sources about their bids; and

(D) There is a reasonable expectation of receiving more than one sealed bid; or

(2) Request competitive proposals if sealed bids are not appropriate under paragraph (1) of this subsection.

33. The Authority may provide for the procurement of property, services, or construction covered by this article using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property, service, or construction if the Authority determines that excluding the source would increase or maintain competition and would likely result in reduced overall costs for procurement of property, services, and construction.

34. The Authority may use procedures other than competitive procedures if:

(a) The property, services, or construction needed by the Authority are available from only one responsible source and no other type of property, services, or construction will satisfy the needs of the Authority;

(b) The Authority's need for the property, services, or construction is of such an unusual and compelling urgency that the Authority would be seriously injured unless the Authority limits the number of sources from which it solicits bids or proposals;
(c) The Authority determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement; or
(d) The property or services needed can be obtained through federal or other sources at reasonable prices.
35. For the purposes of applying section 34(a):
(a) In the case of a contract for property, services, or construction to be awarded on the basis of acceptance of an unsolicited proposal, the property, services, or construction shall be deemed to be available from only one responsible source if the source has submitted an unsolicited proposal that demonstrates a concept:
(1) That is unique and innovative or, in the case of a service, for which the source demonstrates a unique capability to provide the service; and
(2) The substance of which is not otherwise available to the Authority and does not resemble the substance of a pending competitive procurement; or
(b) In the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment or the continued provision of highly specialized services, the property, services, or construction may be deemed to be available from only the original source and may be procured through procedures other than competitive procedures if it is likely that award to a source other than the original source would result in:
(1) Substantial duplication of cost to the Authority that is not expected to be recovered through competition; or
(2) Unacceptable delays in fulfilling the Authority's needs.
36. If the Authority uses procedures other than the competitive procedures to procure property, services, or construction under section 34(b), the Authority shall request offers from as many potential sources as is practicable under the circumstances.
37. (a) To promote efficiency and economy in contracting, the Authority may use simplified acquisition procedures for purchases of property, services, or construction.
(b) For the purposes of this section, simplified acquisition procedures may be used for purchases for an amount that does not exceed the simplified acquisition threshold adopted by the federal government.
(c) A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the procedures under subsection (a) of this section.
(d) In using simplified acquisition procedures, the Authority shall promote competition to the maximum extent practicable.
38. The Board shall adopt policies and procedures to implement sections 32- 37 of this Article. The policies and procedures shall provide for publication of notice of procurements and other actions designed to secure competition where competitive procedures are used.
39. The Authority, in its discretion, may reject any and all bids or proposals received in response to a solicitation.

Article V

Incidental Powers

40. The Authority shall have power to construct grade separations at intersections of the project with public highways and to change and adjust the lines and grades of such highways so as to accommodate the same to the design of such grade separation. The cost of such grade separations, and any damage incurred in changing and adjusting the lines and grades of such highways, shall be ascertained and paid by the Authority as a part of the cost of the project. If the Authority shall find it necessary to change the location of any portion of any public highway, it shall cause the same to be reconstructed at such location as the Authority shall deem most favorable and of substantially the same type and in as good condition as the original highway. The cost of such reconstruction and any damage incurred in changing the location of any such highway shall be ascertained and paid by the Authority as a part of the cost of the project.

41. Subject to the approval by the highest ranking official of the jurisdiction in which the work is to take place, as the case may be, the Mayor of the District of Columbia, Governor of Maryland, or Governor of Virginia, any public highway affected by the construction of the project may be vacated or relocated by the Authority in the manner now provided by law for the vacation or relocation of public roads, and any damages awarded on account thereof shall be paid by the Authority as a part of the cost of the project.

42. In addition to the foregoing powers, the Authority and its authorized agents and employees may enter upon any lands, waters, and premises in the District of Columbia, Commonwealth of Virginia, and State of Maryland for the purpose of making surveys, soundings, drillings, and examinations as they may deem necessary or convenient for the purposes of this Compact, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending. The Authority shall make reimbursement for any actual damage resulting to such lands, waters, and premises as a result of such activities.

43. The Authority shall also have power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation, and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances (herein called "public utility facilities") of any public utility in, on, along, over, or under the project. Whenever the Authority shall determine that it is necessary that any such public utility facilities which now are, or hereafter may be, located in, on, along, over, or under the project should be relocated in the project, or should be removed from the project, the public utility owning or operating such facilities shall relocate or remove the same in accordance with the order of the Authority, provided that the cost and expenses of such relocation or removal, including the cost of installing such facilities in a new location or new locations, and the cost of any lands, or any rights or interests in lands, and any other rights, acquired to accomplish such relocation or removal, shall be ascertained and paid by the Authority as a part of the cost of the project. In case of any such relocation or removal of facilities, the public utility owning or operating the same, its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances, in the new location or new locations, for as long a period, and upon the

same terms and conditions, as it had the right to maintain and operate such facilities in their former location or locations.

44. The Authority may use all lands owned by the District of Columbia, Commonwealth of Virginia, and State of Maryland, including lands lying under water, which are necessary for the construction or operation of the project subject to approval of the highest-ranking official of the affected jurisdiction.

Article VI

Revenue Bonds

45. The Authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of revenue bonds, notes, or other evidence of obligation of the Authority to pay all or a part of the cost of all or a part of the project.

Article VII

Trust Indenture

46. In the discretion of the Authority, any bonds, notes, or other evidence of obligation issued under the provisions of this Compact may be secured by a trust indenture by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the District of Columbia, Commonwealth of Virginia, or State of Maryland. Such trust indenture or the resolution providing for the issuance of such bonds may pledge or assign the tolls and other revenues to be received, but shall not convey or mortgage the project or any part thereof.

Article VIII

Revenues

47. The Authority is hereby authorized to fix, revise, charge, and collect tolls for the use of the project, and to contract with any person, partnership, association, or corporation desiring the use thereof, and to fix the terms, conditions, rents, and rates of charges for such use.

48. Such tolls shall be so fixed and adjusted in respect of the aggregate of tolls from the project as to provide a fund sufficient with other revenues, if any, to pay the cost of maintaining, repairing, and operating such project, and the principal of, and the interest on, such bonds as the same shall become due and payable, and to create reserves for such purposes. Such tolls shall not be subject to supervision or regulation by any other authority, board, bureau, or agency of the District of Columbia, Commonwealth of Virginia, or State of Maryland. The tolls and all other revenues derived from the project in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary to pay such cost of maintenance, repair, and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust indenture securing the same, shall be set aside at

such regular intervals as may be provided in such resolution or such trust indenture in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of, and the interest on, such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The tolls, other revenues, or other moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and 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 Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust indenture by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust indenture. Except as may otherwise be provided in such resolution or such trust indenture, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another.

Article IX

Trust Funds

49. All moneys received pursuant to the authority of this Compact, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this Compact. The resolution authorizing the bonds of any issue or the trust indenture securing such bonds shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes thereof, subject to such regulations as this Compact and such resolution or trust indenture may provide.

Article X

Remedies

50. Any holder of bonds, notes, or other evidence of obligation issued under the provisions of this Compact or any of the coupons appertaining thereto, and the trustee under any trust indenture, except to the extent the rights herein given may be restricted by such trust indenture or the resolution authorizing the issuance of such bonds, notes, or other evidence of obligation, may, either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the District of Columbia, Commonwealth of Virginia, and State of Maryland, or granted hereunder or under such trust indenture or the resolution authorizing the issuance of such bonds, notes, or other evidence of obligation, and may enforce and compel the performance of all duties required by this Compact or by such trust indenture or resolution to be performed by the Authority or by any officer thereof, including the fixing, charging, and collecting of tolls.

Article XI

Tax Exemption

51. The exercise of the powers granted by this Compact will be in all respects for the benefit of the people of the District of Columbia, Commonwealth of Virginia, and State of Maryland and for the increase of their commerce and prosperity, and as the operation and maintenance of the project will constitute the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon the project or any property acquired or used by the Authority under the provisions of this Compact or upon the income therefrom, and the bonds, notes, or other evidence of obligation issued under the provisions of this Compact, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation within the District of Columbia, Commonwealth of Virginia, and State of Maryland.

Article XII

Bonds Eligible for Investment

52. Bonds, notes, or other evidence of obligation issued by the Authority under the provisions of this Compact are hereby made securities in which all public officers and public bodies of the District of Columbia, Commonwealth of Virginia, and State of Maryland and their political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds, notes, or other evidence of obligation are hereby made securities which may properly and legally be deposited with, and received by, any District of Columbia, Commonwealth of Virginia, and State of Maryland municipal officer or any agency or political subdivision thereof for any purpose for which the deposit of bonds, notes, or other evidence of obligation is now or may hereafter be authorized by law.

Article XIII

Miscellaneous

53. Any action taken by the Authority under the provisions of this Compact may be authorized by resolution at any regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted.

54. The project when constructed and opened to traffic shall be maintained and kept in good condition and repair by the Authority. The project shall also be policed and operated by such force of police, toll-takers, and other operating employees as the Authority may in its discretion employ. The Authority shall comply with all laws, ordinances, and regulations of the signatories and political subdivisions and agencies

thereof with respect to the use of streets, highways, and all other vehicular facilities, traffic control and regulation, signs, and buildings.

55. An Authority police officer shall have all the powers granted to a peace officer and police officer of the District of Columbia, Commonwealth of Virginia, and the State of Maryland. However, an Authority police officer may exercise these powers only on property owned, leased, operated by, or under control of the Authority, and may not exercise these powers on any other property unless:

(a) Engaged in fresh pursuit of a suspected offender;

(b) Specially requested or permitted to do so in a political subdivision by its chief executive officer or its chief police officer; or

(c) Ordered to do so by the Mayor of the District of Columbia, or the Governor of Maryland or Virginia.

56. All other police officers of the signatory parties and of each county, city, town, or other political subdivision of the District of Columbia, Commonwealth of Virginia, and State of Maryland through which the project, or portion thereof, extends shall have the same powers and jurisdiction within the limits of such projects as they have beyond such limits and shall have access to the project at any time for the purpose of exercising such powers and jurisdiction.

57. On or before the last day of September in each year, the Authority shall make an annual report of its activities for the preceding calendar year to the Governors of Maryland and Virginia and the Mayor of the District of Columbia. Each such report shall set forth a complete operating and financial statement covering its operations during the year. The Authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or operation of the project. The records, books, and accounts of the Authority shall be subject to examination and inspection by duly authorized representatives of the governing bodies of Maryland, Virginia, and the District of Columbia, and by any bondholder or bondholders at any reasonable time, provided the business of the Authority is not unduly interrupted or interfered with thereby.

58. Any member, agent, or employee of the Authority who contracts with the Authority or is interested, either directly or indirectly, in any contract with the Authority or in the sale of any property, either real or personal, to the Authority shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 1 year, or both.

59. Any person who uses the project and fails or refuses to pay the toll provided therefor shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not more than $100 or by imprisonment for not more than 30 days, or both, and in addition thereto the Authority shall have a lien upon the vehicle driven by such person for the amount of such toll and may take and retain possession thereof until the amount of such toll and all charges in connection therewith shall have been paid.

60. When one signatory adopts an amendment or supplement to an existing section of the Compact, that amendment or supplement shall not be immediately effective, and the previously enacted provision or provisions shall remain in effect in each jurisdiction until the amendment or supplement is approved by the other signatories and is consented to by Congress.

Appendix C

Buffalo and Fort Erie Public Bridge Company Act

1934, c. 63

NY: Chapter 824 , Laws of 1933 not codified

An Act respecting the Buffalo and Fort Erie Public Bridge Company

[*Assented to 28th March, 1934*]

1923, c. 74 Preamble WHEREAS by chapter seventy-four of the statutes of Canada, 1923, and by chapter three hundred and seventy-nine of the laws of the state of New York, 1922, two companies were incorporated under the name of Buffalo and Fort Erie Public Bridge Company, with authority to construct, maintain and operate a bridge across the Niagara River between the city of Buffalo, in the state of New York, and the village (now the town) of Fort Erie, in the province of Ontario, and by agreement dated thirteenth day of June, 1925, the said two companies were amalgamated and consolidated so as to form one and a new single company under the same name in accordance with, and subject to, the provisions of the said Acts of incorporation; and whereas for the purpose of the reorganization and refinancing of the said bridge undertaking upon a basis which will permit of a considerable reduction of fixed charges and consequent reduction of tolls now charged, by an Act of the Legislature of the state of New York, being chapter eight hundred and twenty-four of the laws of the said state for 1933, (hereinafter called "Act of Incorporation", and a copy of which is, for the information only of Parliament, attached as a Schedule hereto), a Board, known as the Buffalo and Fort Erie Public Bridge Authority, was created a body corporate and politic, constituting a public benefit corporation, with power to acquire, hold and manage the property and assets of the Buffalo and Fort Erie Public Bridge Company; and whereas by the Act of Incorporation it is provided that the said Board shall consist of nine members, six of whom are required to be citizens of the United States and residents of the state of New York, to be appointed and removed by the Governor of the said state, and three of whom are required to be residents of the Dominion of Canada, to be appointed and removed as may be determined by the Government of the Dominion of Canada; and whereas the Buffalo and Fort Erie Public Bridge Company has by its petition requested that authority be granted to it to convey all its property and assets within the Dominion of Canada to the Buffalo and Fort Erie Public Bridge Authority: Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:--

Company may acquire and manage property and assets **1.** (1) Subject to the provisions of this Act, the Buffalo and Fort Erie Public Bridge Authority, created by the Act of Incorporation (hereinafter called "the Bridge Authority"), is hereby authorized and empowered to acquire, hold and manage the property and assets within Canada of the Buffalo and Fort Erie Public Bridge Company.

Transfer (2) Subject to the provisions of section eleven of this Act the Buffalo and Fort Erie Public Bridge Company is hereby authorized and empowered to transfer and convey to the Bridge Authority all of its property and assets within Canada.

Members not employees of His Majesty **2.** Nothing in this Act shall be deemed to have effect to give the members, officers or employees of the Bridge Authority the status of officers or employees of His Majesty.

Appointment of Canadian members **3.** (1) The Governor in Council may appoint, to hold office during pleasure, five persons, being Canadian citizens resident in Canada, to be the members of the Bridge Authority that under the provisions of the Act of Incorporation are to be appointed by Canada.

Deputies (2) A member of the Bridge Authority appointed under subsection (1) may, with the approval of the Minister of Transport, appoint a deputy in writing to attend any meeting of the Bridge Authority and to act and vote in the member's place.

1934, c. 63, s. 3; 1957-58, c. 10, s. 1; 1995, c. 14, s. 1.

Attorney to be appointed **4.** (1) The Bridge Authority shall, within sixty days from the passing of this Act, by resolution appoint a person resident in the county of Welland, in the province of Ontario, its attorney to receive service of process in all suits and proceedings instituted in Canada against the Bridge Authority.

Certified copy (2) The Bridge Authority shall cause a certified copy of such resolution to be filed forthwith after the adoption thereof, in the office of the Secretary of State of Canada.

Powers of Bridge Authority **5.** The Bridge Authority is hereby authorized and empowered, subject to the provisions of this Act, to exercise its powers and,

R.S., c. 170 (*a*) To maintain and operate the property acquired or held by it, and subject to the provisions of the *Railway Act*, charge tolls in respect thereof;

(*b*) To sue and be sued;

(*c*) subject to the terms, conditions and restrictions set forth in its Act of Incorporation, to issue, sell or exchange from time to time its negotiable bonds in the aggregate principal amount not exceeding at any one time one hundred million dollars or such greater amount as the Governor in Council, on the recommendation of the Minister of Transport and with the concurrence of the Minister of Finance, may fix;

(*d*) To secure such negotiable bonds by mortgage, charge or pledge of property and assets acquired and held by it, including the tolls and revenues arising therefrom; and

(*e*) To apply the proceeds of any such bonds in the manner and for the purposes provided by its Act of Incorporation.

1934, c. 63, s. 5; 1970-71-72, c. 5, s. 1; 1995, c. 14, s. 2.

Bonds **6.** The bonds and other obligations of the Bridge Authority shall not be a debt of the Dominion of Canada, nor shall the Dominion of Canada be liable thereon.

Default **7.** In the event of default being made under any bonds issued by the Bridge Authority, the Trustee for the bondholders shall, with respect to the property and assets within Canada constituting the security, or a part thereof, for the said bonds, have in addition to such remedies as may otherwise be available to him, all remedies available to a mortgagee under the laws of the province of Ontario.

Notice to the Attorney General **8.** (1) The remedies of the bondholders and the trustee provided in the Act of Incorporation of the Bridge Authority or under this Act, are subject to the limitation that, before taking any proceeding to enforce such remedies, or any of them, the Trustee shall first give notice in writing to the Attorney General of Canada; and if when such notice is given to the said Attorney General, Parliament shall be in session, the Trustee shall not declare the principal of the bonds due before Parliament prorogues, provided, however, that Parliament has been in session for at least four weeks after notification shall have been given to the Attorney General as aforesaid.

When principal of bonds to be declared due (2) If Parliament be not then in session, or has not been in session for at least four weeks after notification shall have been given to the Attorney General as aforesaid, the Trustee shall not declare the principal of the bonds due until the next regular session of Parliament is ended by prorogation.

Default remedied (3) If at any session of Parliament referred to in subsections one and two of this section, Parliament shall take any action as a result of which past due principal and interest, with interest on past due interest, together with fees, counsel fees and expenses of the trustee and of the receiver, if any, as fixed by the Court of competent jurisdiction shall be paid within sixty days after prorogation, default in the payment thereof shall thereby be remedied.

Minister of Transport **9.** Except as otherwise provided in this Act, the Minister of Transport, or a person designated by that Minister, is the authority or agency that under any provision of the Act of Incorporation is to be designated by Canada.

1934, c. 63, s. 9; 1957-58, c. 10, s. 2; 1995, c. 14, s. 3.

Termination of rights, powers, etc. **10.** On the later of the following days namely,

(*a*) the 1st day of July, 2020, or

(*b*) the day that any bonds issued by the Bridge Authority prior to the 1st day of July, 2020, are paid in full or are otherwise discharged,

the rights, powers and jurisdiction of the Bridge Authority under this Act are terminated, and the property acquired or held by it within Canada becomes the property of Her Majesty in right of Canada, to be held, administered or disposed of as the Governor in Council may direct.

1934, c. 63, s. 10; 1957-58, c. 10, s. 2; 1970-71-72, c. 5, s. 2.

Bridge Authority to be subject to assessment and taxation **11.** Nothing herein contained shall in any way affect, prejudice, limit, or alter any right or interest in respect of provincial or municipal assessment and taxation, or deprive the province of Ontario or any municipality thereof of the right to assess and tax the real property within Canada of the Buffalo and Fort Erie Public Bridge Company, or of the Bridge Authority and the said real property acquired, held or managed by the Bridge Authority, and the Bridge Authority itself, shall be subject to assessment and taxation.

Jurisdiction and control of Niagara Parks Commission **12.** Notwithstanding anything in this Act contained, the jurisdiction and control of the Niagara Parks Commission in respect to the matters placed under its jurisdiction and control by virtue of chapter eighty-one of the Revised Statutes of Ontario, 1927, shall continue the same as if this Act had not been passed.

Money paid to Canada **13.** Any money payable to the Government of Canada under the Act of Incorporation shall be paid to the Minister of Transport and shall form part of the Consolidated Revenue Fund.

1957-58, c. 10, s. 3; 1995, c. 14, s. 4.

Reference to "Act of Incorporation" **14.** A reference in this Act to the Act of Incorporation shall be construed as a reference to the Act of Incorporation as amended from time to time.

SCHEDULE

"LAWS OF NEW YORK.—By Authority
CHAPTER 824

An Act creating Buffalo and Fort Erie Public Bridge Authority providing for its appointment and defining its jurisdiction, powers and duties; authorizing it to issue and sell or exchange its bonds and authorizing their use for certain purposes; authorizing it to acquire all the assets and property of the Buffalo and Fort Erie Public Bridge Company;

authorizing it to maintain and operate such property and assets and to charge tolls for the use thereof and to acquire other assets; authorizing it to exercise authority, powers and duties not inconsistent herewith, granted by the Dominion of Canada, and generally to define its purposes and to provide for the exercise of its powers

Became a law August 31, 1933, with the approval of the Governor. Passed, on message of necessity, three-fifths being present

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

Section 1. Buffalo and Fort Erie Public Bridge Authority. A board to be known as Buffalo and Fort Erie Public Bridge Authority is hereby created which shall be a body corporate and politic, constituting a public benefit corporation, to consist of nine members.

2. The board shall constitute the municipal corporate instrumentality of the state of New York, for the purpose of carrying out the provisions of this Act. The Board is hereby authorized and empowered to act for and become the agency or instrumentality, corporate or otherwise, of the Dominion of Canada, with like duties and authority, or with such duties, powers, authority and purposes as may be determined by the Dominion of Canada with reference to the lands, bridges, terminals, approaches and properties within the Dominion of Canada connected with or usable with the property and assets authorized to be acquired and conveyed to the board hereunder and now constituting the property and assets of the Buffalo and Fort Erie Public Bridge Company.

3. Six members of the board, who shall be citizens of the United States and residents of the state of New York, shall be appointed and may be removed by the governor; three members of the board, who shall be residents of the Dominion of Canada, shall be appointed, and may be removed, in such manner and at such time and may hold office for such period as may be determined by the Dominion of Canada. Of the members first appointed by the governor, two shall be designated by him to serve for two years from the date of their appointments; two shall be designated by him to serve for four years from such date and two shall be designated by him to serve for six years from such date. Thereafter each member appointed by the governor shall serve for a term of six years from the date of his appointment.

4. Vacancies in the board caused by the death, disqualification, resignation or removal of a member appointed by the governor shall be filled by appointment by the governor. If a vacancy shall occur by reason of the death, disqualification, resignation or removal of a member who is a resident of the Dominion of Canada, the person appointed to fill such vacancy must be a resident of the Dominion of Canada and such appointment shall be made in the manner and by such authority as the Dominion of Canada may require.

5. The members of the board shall serve without compensation, but the board shall have authority to compensate its members for expenses and disbursements from funds collected by it in the operation of properties acquired by it.

6. The board shall appoint annually a chairman, a vice-chairman or vice-chairmen, a secretary, an assistant secretary, a treasurer, and an assistant treasurer, and may delegate to them such powers and duties as it may deem proper.

7. The Board may adopt such by-laws, rules and regulations for the calling and conduct of its meetings and the management of its affairs as it may deem necessary or proper, not inconsistent with the provisions of this Act. A majority of the board shall constitute a quorum for the transaction of any business and the concurrence of a majority of the members of the board shall be necessary to the validity of any action by the board.

8. The Board may appoint agents and employees with such powers and duties as it may determine, and shall fix their compensation and pay the same out of any funds collected by it in the operation of properties acquired by it.

9. The Buffalo and Fort Erie Public Bridge Authority shall have power:

1. To sue and be sued.

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

3. To acquire, hold and dispose of real and personal property for its corporate purposes.

4. To make contracts and to execute all instruments necessary or convenient.

5. To maintain, reconstruct, repair and replace and operate any properties acquired by it, and pay for the same out of any funds collected by it in the operation of properties acquired by it.

6. To do any other act or thing necessary or proper to carry out, accomplish or effectuate the purposes of this act.

10. The board is authorized to lease and permit to be maintained under such lease, over or along the property acquired by it, telephone, telegraph or electric wires, cables, gas mains, water mains and other mechanical equipment, not inconsistent with the use of the property for vehicular and pedestrian traffic, on such terms and at such consideration as it shall determine, provided, however, that no lease shall be made for a period extending beyond the term of the existence of the board.

11. The board is hereby authorized to acquire title to all of the assets and property of the Buffalo and Fort Erie Public Bridge Company and to pay therefor a sum not exceeding the aggregate of

(*a*) The amount necessary to redeem bonds of such company issued and now outstanding;

(*b*) The amount necessary, not exceeding fifty thousand dollars and accrued dividends, to retire the capital stock of such company;

(*c*) The amount necessary to pay other indebtedness which such company is obligated to pay.

The Buffalo and Fort Erie Public Bridge Company is hereby authorized to transfer and convey to the board all of its assets and property.

12. The board is hereby authorized to accept deeds, bills of sale and other transfers deemed necessary or proper to transfer and convey to the board all of the assets and property of the Buffalo and Fort Erie Public Bridge Company and to hold the same under the provisions of this act, until such time as all of the bonds issued by the board hereunder shall have been paid in full or shall have otherwise been discharged.

13. When all of the bonds issued by the board hereunder shall have been paid in full or shall have otherwise been discharged, the powers, jurisdiction and duties of the board shall cease and the property and assets acquired and held by it within the state of New York shall thereafter be under such jurisdiction, authority or agency as the legislature may designate, and the assets and property acquired or held by it within the Dominion of Canada shall be under such jurisdiction, authority or agency as the Dominion of Canada may designate.

14. The Buffalo and Fort Erie Public Bridge Authority shall have power and is hereby authorized from time to time to issue its negotiable bonds in the aggregate principal amount of not exceeding at any one time four million dollars.

2. The bonds and the indenture, if any, under which they are issued, shall be authorized by resolution of the board and shall bear such date or dates, mature at such time or times, not exceeding fifty years from their respective dates, except that no bonds shall mature before January first, nineteen hundred thirty-seven, bear interest at such rate or rates not exceeding five per centum per annum, payable semi-annually, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places and be subject to such terms of redemption, not exceeding a premium of one and one-half per centum as such resolution or resolutions may provide. The bonds may be sold at public or private sale for such price or prices as the board shall determine, but at no greater discount than five per centum of the face amount thereof.

3. The bonds may be issued for any corporate purpose of the Buffalo and Fort Erie Public Bridge Authority and/or may be exchanged for outstanding bonds or other indebtedness of the Buffalo and Fort Erie Public Bridge Company on such terms as may be agreed upon by the board and the holders and owners of such bonds and other indebtedness, except that the exchange price thereof shall not be greater in par value of

bonds of the board than the redemption price of the bonds of such company under existing indentures and the face amount of such other indebtedness.

4. Any resolution or resolutions authorizing any bonds or any indenture authorizing the issuance of bonds may contain provisions which shall be a part of the contract with the holders of the bonds or part of the indenture as to

(*a*) pledging the tolls and revenues of the properties to secure the payment of the bonds;

(*b*) the rates of tolls to be charged and the amount to be raised in each year by tolls and the use and disposition of the tolls and other revenue;

(*c*) the setting aside of reserves or sinking funds and the regulation or disposition thereof, provided that no requirement shall be made by which bonds are retired in excess of ten per centum of the total outstanding bonds in any one year;

(*d*) limitations on the right of the board to restrict and regulate the use of the project;

(*e*) limitations on the purpose to which the proceeds of the sale of any issue of bonds then or thereafter to be issued may be applied;

(*f*) limitations on the issuance of additional bonds;

(*g*) 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;

(*h*) the manner of redemption of such bonds, and

(*i*) insurance to be carried on the property acquired by the board.

5. The bonds, if the board so determines, may be issued under an indenture between the board and a trustee for bondholders in such form and containing such terms and conditions not inconsistent with this act, as the board may determine.

15. Before any such bonds shall be issued or sold or exchanged, and before any such conveyance shall be made or property acquired, all proper and requisite authority for the issuance of such bonds shall be obtained from the Dominion of Canada. The Dominion of Canada may attach such conditions not inconsistent with this act with respect to the transfer of the properties, rights and franchises of the corporation situated within the Dominion of Canada as it may deem necessary.

16. Subject to any contract with the holders of any bonds, the board shall have power at any time or from time to time to issue new bonds in place of those then outstanding having like or different terms and secured by like or different provisions. Such bonds may be exchanged for outstanding bonds or may be sold and the proceeds applied to the payment of the outstanding bonds.

17. Neither the members of the board nor any person executing such bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

18. The board shall have power, out of any funds available therefor, to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest.

19. The bonds shall be a first lien on the real estate and bridge property of the Buffalo and Fort Erie Public Bridge Authority, including structures and approaches and lands and easements used therewith, except as to first mortgage bonds now outstanding against such real estate and property, and as to debenture bonds now outstanding.

20. In the event that the board shall default in the payment of principal or of interest on any of the 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 that the board shall fail or refuse to comply with the provisions of this act or shall default in any agreement made with the holders of the bonds, the trustee appointed in the indenture under which such bonds are issued, or if there be no indenture, then a trustee appointed by twenty-five per centum in face amount of bonds then outstanding, may and upon written request of the holders of twenty-five per centum in principal amount of the bonds then outstanding, shall in his or its own name:

(*a*) By mandamus or other suit, action or proceeding in law or in equity, enforce all rights of the bondholders including the right to require the board to collect tolls and rentals adequate to carry out any agreement as to or pledge of such tolls and rentals and to require the board to carry out any other agreements with the bondholders and to perform its and their duties under this act;

(*b*) Bring suit upon the bonds;

(*c*) By action or suit in equity, require the board to act as if it were the trustee of an express trust for the bondholders;

(*d*) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders;

(*e*) Declare all bonds due and payable and if all defaults shall be made good, then with the consent of the holders of twenty-five per centum of the principal amount of the bonds then outstanding, to annul such declaration and its consequences;

(*f*) To enforce any remedy be foreclosure or suit and the supreme court is hereby given jurisdiction of any suit, action or proceeding by the trustee on behalf of the bondholders, the venue of which shall be laid in the county of Erie and state of New York.

Any such trustee on default in the payment of principal and interest, whether or not all bonds have been declared due and payable, shall be entitled as of right to the appointment

of a receiver who may enter and take possession of the assets and property or any part or parts thereof and operate and maintain the same and collect and receive all tolls, rentals and other revenues thereafter arising therefrom in the same manner as the board itself might do and shall deposit all such moneys in a separate account and apply the same in such manner as the court shall direct. In any suit, action or proceeding by the trustee 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 court shall be a first charge on any tolls, rentals and other revenues derived from such assets. Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of the bondholders in the enforcement and protection of their rights.

The foregoing remedies of the bondholders and of the trustee, however, are subject to the limitations that before declaring the principal of all bonds due and payable, the trustee shall first give notice in writing to the board and to the attorney-general of the state of New York, and if, when such notice is given to the attorney-general, the legislature shall be in session, the trustee shall not declare the principal of the bonds due before the legislature adjourns sine die or if the legislature be not then in session, the trustee shall not declare the principal of the bonds due until such an adjournment of the next regular session. If at such session the legislature shall take any action as a result of which past due principal and interest, with interest on past due interest, together with fees, counsel fees and expenses of the trustee and of the receiver, if any, as fixed by the court, shall be paid within sixty days of adjournment, default in the payment thereof shall thereby be remedied.

21. The bonds and other obligations of the Buffalo and Fort Erie Public Bridge Authority shall not be a debt of the state of New York nor of the Dominion of Canada and neither the state of New York nor the Dominion of Canada shall be liable thereon nor shall they be payable out of any funds other than those of the Buffalo and Fort Erie Public Bridge Authority.

22. The bonds are hereby made securities in which all public officers and bodies of this state and all municipalities and municipal subdivisions may properly and legally invest funds in their control or accept as security for deposits and all insurance companies and associations, all savings banks and savings institutions, including savings and loan associations, administrators, guardians, executors, trustees and other fiduciaries of the state may properly and legally invest funds in their control.

23. Bonds and property to be tax exempt. The properties of the Buffalo and Fort Erie Public Bridge Authority shall be exempt from all taxes and assessments by the state or any municipality or municipal subdivision thereof and the bonds shall be exempt from taxation except for transfer, estate and inheritance taxes.

24. The board, subject to the authority vested in the secretary of war of the United States and the authority of the Dominion of Canada, shall have power and be required to fix the rate of tolls for the use of the bridge, approaches, connections and appurtenances;

provided, however, that the toll charges for pedestrian and vehicular traffic shall be discretionary and adjusted from time to time, but at a rate consistent with any contract with the holders of its bonds, and shall not be higher than, in the judgment of the board, is necessary to provide for the payment of interest, operating expenses, maintenance and insurance, repairs, replacements and proper working funds and to mature from two and one-half per centum to not more than ten per centum of the total outstanding bonds in any one year, except that no provision shall be made for the redemption of bonds issued by the board before January first, nineteen hundred thirty-seven.

25. Within thirty days after the execution and delivery of the deeds of conveyance authorized by this act, the board shall execute and file with the comptroller of the state of New York and with such authority as the Dominion of Canada may designate, a detailed verified statement of the assets and liabilities of the corporation. The board annually in the month of February or oftener when required shall file with the comptroller of the state of New York and with such authorities of the Dominion of Canada as may be designated by the Dominion of Canada, an itemized detailed verified report of all receipts and disbursements of the corporation subsequent to the execution and delivery of the deeds of conveyance as authorized by this act.

26. All moneys received by the Buffalo and Fort Erie Public Bridge Authority shall be paid to the treasurer thereof or other officer or officers designated by the board for the purpose. The treasurer and each other officer of the board receiving moneys of the Buffalo and Fort Erie Public Bridge Authority shall execute in duplicate an undertaking in such amount or amounts and with such sureties as may be approved by the comptroller of the state of New York, and by such authority as may be designated for the purpose by the Dominion of Canada, conditioned for the safekeeping and lawful application of all moneys which may come to his hands, and shall file one copy in the office of the state department of audit and control and one copy in such office or department as may be designated by the Dominion of Canada. Such bond may be increased or reduced from time to time in the discretion of the comptroller and of such authority designated by the Dominion of Canada. The state treasurer and his legally authorized representatives and the state comptroller and his legally authorized representatives and such authority as may be designated by the Dominion of Canada are hereby authorized and empowered from time to time to examine the accounts and books of the board, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other matters relating to its financial standing.

27. The following terms, whenever used, or referred to in this act, shall have to following meaning unless a different meaning clearly appears from the context:

1. The term "Buffalo and Fort Erie Public Bridge Authority" shall mean the corporation created by section one of this act.

2. The term "board" shall mean the members of the Buffalo and Fort Erie Public Bridge Authority.

3. The term "bridge" shall mean terminals, approaches buildings, rights, easements and privileges.

4. The term "bonds" shall mean bonds issued by the Buffalo and Fort Erie Bridge Authority pursuant to this act, except where reference is made to the bonds of Buffalo and Fort Erie Public Bridge Company.

5. The term "Buffalo and Fort Erie Public Bridge Company" and the term "Company" as used herein shall mean the Buffalo and Fort Erie Public Bridge Company which is a consolidation of a corporation organized under chapter three hundred and seventy-nine of the laws of nineteen hundred and twenty-two and a corporation authorized under thirteen and fourteen, George V, chapter seventy-four of the Parliament of the Dominion of Canada.

28. If any section, clause or provision of this Act shall be unconstitutional or be ineffective, in whole or in part, to the extent that it is not unconstitutional, it shall be valid and effective and no other section, clause or provision shall on account thereof be deemed invalid or ineffective.

29. Insofar as the provisions of this act are inconsistent with the provisions of any other act, general or special, the provisions of this act shall be controlling.

30. This act shall take effect immediately."

Appendix D

COLUMBIA RIVER LIGHT RAIL TRANSIT COMPACT

391.301 Ratification of compact. The Legislative Assembly of the State of Oregon hereby adopts and ratifies the Columbia River Light Rail Transit Compact set forth in ORS 391.306, and the provisions of the compact are hereby declared to be the law of this state upon such compact becoming effective as provided in Article XXII of the compact. [1996 c.13 §1]

391.306 Columbia River Light Rail Transit Compact. The provisions of the Columbia River Light Rail Transit Compact are as follows:

ARTICLE I
Columbia River Light Rail
Transit Authority Established

The States of Oregon and Washington establish by way of this interstate compact an independent, separate regional authority, which is an instrumentality of both of the signatory parties hereto, known as Columbia River Light Rail Transit Authority (hereinafter referred to as the "Authority"). The Authority shall be a body corporate and politic, and shall have only those powers and duties granted by this compact and such additional powers as may hereafter be conferred upon the Authority by the acts of both signatories.

ARTICLE II
Definitions

As used in this compact, the following words and terms shall have the following meanings, unless the context clearly requires a different meaning:

(1) "C-TRAN" means the Clark County Public Transportation Benefit Authority based in Clark County, Washington, or any successor agency or authority.

(2) "Major feeder system" means all bus or other transit services provided by C-TRAN or Tri-Met that are or are planned to be connected with the South North light rail transit line, to accommodate the transfer of passengers to or from the light rail line and to transport light rail passengers between the light rail station and their trip origin or trip destination.

(3) "Signatory" or "signatory state" means the State of Oregon or the State of Washington.

(4) "South North light rail transit line" means the light rail line directly connecting portions of Clackamas County, Oregon, Portland, Oregon and Clark County, Washington as may be extended from time to time, including any segment thereof, and also including, without limitation, all light rail vehicles, rights-of-way, trackage, electrification, stations, park-and-ride facilities, maintenance facilities, tunnels, bridges and equipment, fixtures, buildings and structures incidental to or required in connection with the performance of

light rail service between portions of Clackamas County, Oregon, Portland, Oregon and Clark County, Washington. The South North light rail transit line shall include a system that comprises any future light rail lines and transit facilities that cross the jurisdictional lines of the signatory states.

(5) "Transit facilities" means all real and personal property necessary or useful in rendering transit service by means of rail, bus, water and any other mode of travel including, without limitation, tracks, rights of way, bridges, tunnels, subways, rolling stock for rail, motor vehicles, stations, terminals, areas for parking and all equipment, fixtures, buildings and structures and services incidental to or required in connection with the performance of transit service.

(6) "Transit service" means the transportation of persons and their packages and baggage by C-TRAN, Tri-Met or the Authority by means of transit facilities.

(7) "Tri-Met" means the Tri-County Metropolitan Transportation District based in Portland, Oregon, or any successor agency or authority.

ARTICLE III
Purpose and Functions

The purpose of the Authority is:

(1) To generally cause the South North light rail transit line to be designed, engineered, financed, constructed and developed consistently with the applicable regional transportation and land use plans and the locally preferred alternative selected pursuant to regulations of the Federal Transit Administration or the regulations of any successor federal agency or authority;

(2) To facilitate the operation and maintenance of the South North light rail transit line;

(3) To coordinate C-TRAN and Tri-Met activities to implement and operate the major feeder system that serves the South North light rail transit line;

(4) To coordinate C-TRAN and Tri-Met activities to implement and operate buses or other transit facilities that serve bi-state trips; and

(5) To serve only such other regional transit purposes and to perform such other regional transit functions as the signatories may authorize.

ARTICLE IV
Powers

The Authority has the power to:

(1) Sue and be sued, plead and be impleaded in all actions, suits or proceedings, brought by or against it.

(2) Adopt suitable rules and regulations not inconsistent with this compact, the Constitution and laws of the United States or the constitutions and laws of the signatories. The Authority may adopt rules and regulations that:

(a) Govern its activities;

(b) Add specificity to its powers and duties;

(c) Interpret legislation that is applicable to the Authority; and

(d) Resolve inconsistencies resulting from the application of the laws and regulations

of both signatories.

(3) Acquire, maintain, control, and convey easements, licenses, and other limited property rights for the purpose of constructing the South North light rail transit line. However, the Authority shall not have the power to own real property.

(4) Receive and accept federal, state, regional or local payments, appropriations, grants, gifts, loans, advances, credit enhancements, credit guarantees and other funds, properties and services as may be transferred or made available to the Authority by either signatory, any political subdivision or agency thereof, by the United States, or by any agency thereof, or by any other public or private corporation or individual. Any funds received by the Authority from any source may be commingled and expended to carry out the purposes and functions of the Authority without regard to any law of the signatories that requires expenditure of appropriated funds within the fiscal period for which the appropriation is made.

(5) Disburse funds for its lawful activities and to make grants or loans to C-TRAN or Tri-Met.

(6) Enter into agreements with:

(a) C-TRAN or Tri-Met to provide planning, engineering, design, administration, construction management or other services needed for the development of the South North light rail transit line;

(b) C-TRAN, Tri-Met or, except with regard to matters specified in paragraph (a) of this subsection, private entities for the construction of the South North light rail transit line;

(c) C-TRAN, Tri-Met or, except with regard to matters specified in paragraph (a) of this subsection, private entities for the construction of bridges over or tunnels under navigable streams and bodies of water to be owned individually or jointly by the States of Oregon and Washington;

(d) C-TRAN or Tri-Met for the management, operation, and maintenance of the South North light rail transit line;

(e) C-TRAN or Tri-Met providing for acquisition by C-TRAN, Tri-Met or other public entities of the property rights needed for the South North light rail transit line and related activities;

(f) C-TRAN, Tri-Met or private entities to purchase, lease or otherwise acquire the materials, equipment and vehicles needed for the construction and implementation of the South North light rail transit line; and

(g) C-TRAN or Tri-Met to implement the decisions of the Authority.

(7) Delegate any of its powers and duties to any political subdivision or governmental agency.

(8) Resolve any disputes between C-TRAN and Tri-Met over the operation of the South North light rail transit line or the major feeder system. However, the Authority shall not have the power to require from C-TRAN and Tri-Met capital improvements to the South North light rail transit line or the major feeder system.

(9) To the extent allowed by law, encourage, assist and facilitate public and private development along the South North light rail transit line.

(10) Perform all other necessary and incidental functions.

(11) Exercise such additional powers as shall be conferred on it by Act of the federal Congress or jointly by the signatories.

ARTICLE V
Board Membership

The Authority shall be governed by a board of six directors consisting of three members of the C-TRAN governing body and three members of the Tri-Met governing body. Directors representing C-TRAN and Tri-Met shall be appointed by their respective governing bodies.

ARTICLE VI
Terms of Office

Board members shall serve terms of four years, unless terminated earlier by the governing body of the appointing transit agency.

ARTICLE VII
Compensation of Directors

The directors shall serve without compensation. The directors may be reimbursed for the necessary expenses incurred in the performance of their duties pursuant to adopted policies of the transit agency that appointed them.

ARTICLE VIII
Organization and Procedure

The board of directors of the Authority shall by rule provide for its own organization and procedure. It shall biennially elect a chairperson from among its directors who shall serve a term of two years subject to earlier removal by a vote of four directors. Meetings of the board shall be held as frequently as the board deems that the proper performance of its duties requires, and the board shall keep minutes of its meetings. The board shall adopt rules and regulations governing its meetings, minutes and transactions.

ARTICLE IX
Staff

The Authority shall not have the power to hire administrative staff. Administrative staff support shall be provided by C-TRAN and Tri-Met by intergovernmental agreement.

ARTICLE X
Quorum and Actions by the Board

Four directors shall constitute a quorum. No action by the board shall be effective unless there is an affirmative vote of a majority of those present.

ARTICLE XI
Conflicts of Interest

(1) No director shall:

(a) Be financially interested, either directly or indirectly, in any contract, sale, purchase, lease or transfer of real or personal property to which the board of directors of the Authority is party;

(b) In connection with services performed within the scope of official duties, solicit or accept money or any other thing of value in addition to the expenses paid to the director by the Authority; or

(c) Offer money or any other thing of value for or in consideration of obtaining an appointment, promotion or privilege in employment with the Authority.

(2) Any director who willfully violates any provision of this section shall, in the discretion of the board, forfeit the office of the director. Any contract or agreement made in contravention of this section may be declared void by the board. Nothing in this section shall be considered to abrogate or limit the applicability of any federal or state law that may be violated by any action proscribed by this section.

ARTICLE XII
Financial Plans and Reports

The board of directors of the authority shall make and publish, as necessary, financial plans and detailed annual budgets for the construction, operation and maintenance of the South North light rail transit line, including a Sources of Funds plan. The board may also prepare, publish and distribute such other public reports and informational materials as it may deem necessary or desirable.

ARTICLE XIII
Operation and Maintenance Costs

(1) The Authority shall annually determine the amount of the South North light rail transit line's operating and maintenance costs and the Authority's administrative costs that shall be contributed to the Authority by C-TRAN and Tri-Met. The amount to be collected from C-TRAN and Tri-Met shall be based upon all relevant factors, including but not limited to, ridership origination and destination and relative usage of the South North light rail transit line.

(2) After establishing the amount to be allocated to C-TRAN and Tri-Met, the Authority shall levy an annual assessment on C-TRAN and Tri-Met for the purpose of financing the management, administration, operation, maintenance, repair, expansion, and related activities for facilities, equipment, systems or improvements included in the South North light rail transit line.

ARTICLE XIV
Capital Contributions

(1) The Authority shall enter into a financing plan agreement with C-TRAN, Tri-Met and any private entities providing construction financing for the South North light rail transit line or any segment thereof, which agreement shall establish a financing plan for the construction phases of the South North light rail transit line, including each segment

thereof. The financing plan agreement shall specify the obligations of each party to pay a portion of the construction costs of the South North light rail transit line, including the estimated total construction costs, the percentage share of each party of the total construction costs, the estimated schedule for the payment of each party's percentage share and the planned source of funds from which each party intends to fund its share of the total construction costs. The financing plan agreement, among other matters, may:

(a) Separately specify each party's obligation for each segment of the South North light rail transit line;

(b) Limit the liability of C-TRAN and Tri-Met to particular funding sources identified in the financing plan agreement;

(c) Make provisions for any interim financing, credit enhancements or guarantees to be provided by C-TRAN, Tri-Met or any other parties in order to supply the funds needed to construct the South North light rail transit line in accordance with the construction schedule established in the financing plan agreement; or

(d) Provide that all or a portion of one party's obligations shall be satisfied by making payments to another party to the agreement in order to pay or reimburse the construction or financing costs incurred by the payee.

(2) The financing plan agreement shall provide that C-TRAN and Tri-Met shall each retain full power and authority to pledge their respective sources of funds as security for any bonds, notes or other obligations issued thereby, and for any credit enhancements obtained in connection with any such bonds, notes or other obligations, in order to provide interim or permanent financing for the construction costs of the South North light rail transit line. The financing plan agreement shall not in any way or to any extent create a pledge of or a lien or encumbrance on any funds of C-TRAN or Tri-Met.

(3) C-TRAN and Tri-Met singly or together shall enter into one or more Full Funding Grant Agreements with the Federal Transit Administration, or its successor, to establish the federal funding commitment for the South North light rail transit line, or any segments thereof, and the terms and conditions for obtaining the federal funds. The Authority shall cause the South North light rail transit line, and each segment thereof, to be designed, engineered and constructed in a manner consistent with the applicable Full Funding Grant Agreement, applicable state laws and the terms and conditions of the financing plan agreement.

(4) The financing plan agreement may be amended from time to time by the Authority, C-TRAN and Tri-Met to the extent such parties determine any amendment is necessary or beneficial. Any such amendment shall require the consent of any private entity that is a party to the financing plan agreement only if and to the extent such consent is required under the terms of the financing plan agreement.

ARTICLE XV
Indemnification

(1) C-TRAN shall hold Tri-Met and the Authority harmless and indemnify Tri-Met and the Authority for any and all liability, settlements, losses, costs, damages and expenses in connection with any action, suit or claim resulting from C-TRAN's negligent errors, omissions or acts in carrying out the purposes of this compact.

(2) Tri-Met shall hold C-TRAN and the Authority harmless and indemnify C-TRAN

and the Authority for any and all liability, settlements, losses, costs, damages and expenses in connection with any action, suit or claim resulting from Tri-Met's negligent errors, omissions or acts in carrying out the purposes of this compact.

(3) The Authority shall hold C-TRAN and Tri-Met harmless and indemnify C-TRAN and Tri-Met for any and all liability, settlements, losses, costs, damages and expenses in connection with any action, suit or claim resulting from the Authority's negligent errors, omissions or acts in carrying out the purposes of this compact.

ARTICLE XVI
Fares

Fares will be established and collected by C-TRAN and Tri-Met for trips originating within their respective districts. Payment of those fares will be honored by the Authority as payment for passage on the South North light rail transit line.

ARTICLE XVII
Insurance

The board of directors of the Authority may self-insure or purchase insurance and pay the premiums therefor against loss or damage, against liability for injury to persons or property and against loss of revenue from any cause whatsoever. Such insurance coverage shall be in such form and amount as the board may determine, subject to the requirements of any agreement or other obligations of the Authority.

ARTICLE XVIII
Tax Exemption

(1) It is hereby declared that the creation of the Authority and the carrying out of the purposes of the Authority is in all respects for the benefit of all people of the signatory states. It is further declared that the Authority and the board of directors are performing a public purpose and an essential government function, including, without limitation, proprietary, governmental and other functions, in the exercise of the powers conferred by this compact. Therefore, the Authority and the board of directors shall not be required to pay taxes or assessments upon any of the property under its jurisdiction, control, possession or supervision or upon its activities in the operation and maintenance of the South North light rail transit line or upon any revenues therefrom.

(2) When C-TRAN or Tri-Met, acting under an agreement with the Authority pursuant to Article IV of this compact, possesses or controls property or conducts activities in the operation and maintenance of the South North light rail transit line:

(a) C-TRAN and Tri-Met shall remain subject to the tax laws of their respective states with respect to such property located, or activities conducted, within their respective states;

(b) C-TRAN shall be subject to the tax laws of the State of Oregon with respect to such property located, or activities conducted, in Oregon only to the extent Tri-Met would be subject to those laws if Tri-Met rather than C-TRAN possessed or controlled the property or conducted the activity; and

(c) Tri-Met shall be subject to the tax laws of the State of Washington with respect to such property located, or activities conducted, in Washington only to the extent C-TRAN would be subject to those laws if C-TRAN rather than Tri-Met possessed or controlled the property or conducted the activity.

ARTICLE XIX
Applicable Laws

The Authority shall be both subject to and exempt from certain laws of the States of Oregon and Washington as concurred in by the legislature of each state, respectively. Where the laws of the States of Oregon and Washington are not made inapplicable to the Authority by legislative action, the laws of the respective states will continue to apply to activities occurring within each state's geographical boundaries. However, the following laws shall apply generally to the Authority regardless of the state in which the activities governed by the laws occur. The following laws shall govern exclusively the matters they address, and the provisions of corresponding or analogous laws of either signatory shall have no effect:

(1) Federal Administrative Procedures Act (5 U.S.C. 500 et seq.), as amended from time to time, or any successor legislation;

(2) Federal Miller Act (40 U.S.C. 270a et seq.), as amended from time to time, or any successor legislation;

(3) Federal prevailing wage law (40 U.S.C. 276a et seq.), as amended from time to time, or any successor legislation;

(4) Federal rules on disadvantaged business enterprises (49 C.F.R. Part 23), as amended from time to time, or any successor legislation;

(5) Federal competitive bidding laws (41 U.S.C. 251 et seq.), as amended from time to time, or any successor legislation; and

(6) ORS 30.260 to 30.300 (1993 Edition).

ARTICLE XX
Jurisdiction of Courts

(1) The United States District Courts shall have original jurisdiction, concurrent with the courts of Oregon and Washington, of all actions brought by or against the Authority and shall enforce subpoenas issued under this Compact. Any such action initiated in a state court shall be removable to the appropriate United States District Court in the manner provided by the Act of June 25, 1948, as amended (28 U.S.C. 1446).

(2) All laws or parts of laws of the United States and of the signatory states that are inconsistent with the provisions of this compact are hereby amended for the purpose of this compact to the extent necessary to eliminate such inconsistencies and to carry out the provisions of this compact.

ARTICLE XXI
Severability

If any provision of this compact, or its application to any person or circumstance, is

held to be invalid, all other provisions of this compact, and the application of all of its provisions to all other persons and circumstances, shall remain valid and to this end, the provisions of this compact are severable.

ARTICLE XXII
Effective Date

This compact shall take effect, and the board of the Authority may exercise its authority pursuant to the compact when it has been ratified by the federal Congress and adopted by both signatories, and the six directors of the board have been appointed. The effective date of this compact shall be the date of the establishment of the board of directors of the Authority.

_____[1996 c.13 §2]

391.311 Effect of compact on powers and privileges of mass transit districts in Oregon and Washington. (1) A mass transit district established under ORS 267.010 to 267.390, when operating under the authority or direction of the Columbia River Light Rail Transit Authority established under the Columbia River Light Rail Transit Compact ratified by ORS 391.301, retains all the rights, powers, privileges and immunities conferred upon the district by ORS 267.010 to 267.390 to the extent that those rights, powers, privileges and immunities are consistent with the provisions of the Columbia River Light Rail Transit Compact.

(2) A mass transit agency organized under the laws of the State of Washington, when operating in Oregon under the authority or direction of the Columbia River Light Rail Transit Authority established under the Columbia River Light Rail Transit Compact ratified by ORS 391.301, may exercise all of the rights, powers, privileges and immunities conferred upon a mass transit district by ORS 267.010 to 267.390 to the extent that those rights, powers, privileges and immunities are consistent with the provisions of the Columbia River Light Rail Transit Compact. [1996 c.13 §3]